

# Islands (Scotland) Bill

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## Policy memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Islands (Scotland) Bill introduced in the Scottish Parliament on 9 June 2017.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 15–EN);
  - a Financial Memorandum (SP Bill 15–FM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 15–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Policy Objective of the Bill

4. Scotland's islands are renowned across the world for their proud traditions and vibrant cultures. They are wonderful places to live, work, study and visit, and contribute much to the fabric of Scotland as a nation. Some of the most resilient and supportive communities in Scotland are within the islands. The inclusive and respectful nature of these communities provides a better quality of life for everyone who lives and works there as demonstrated frequently in quality of life surveys.
5. However, island communities face challenges around geographic remoteness, declining populations, transport and digital connections, and

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other issues. Working in partnership with island communities, local authorities and other organisations the Scottish Government is already tackling many of these challenges through a range of policy initiatives and investment in housing, ferry services, air travel, digital and mobile programmes and our commitment to providing the net revenue from Crown Estate marine assets out to 12 nautical miles to coastal and island councils.

6. This Bill introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the public sector to meet the needs of island communities both now and in the future. The Government is committed to supporting these communities and improving outcomes by creating the right environment for investment, empowerment and increasing sustainable economic growth. It is expected that the measures in this Bill, in conjunction with existing Government, local authority and public body actions in meeting the needs of island communities, will contribute to creating the right conditions for growth.

## Background

7. In August 2013 in response to the *Our Islands Our Future*<sup>1</sup> campaign, launched by Orkney and Shetland Islands Councils and Comhairle nan Eilean Siar, the Scottish Government established the Island Areas Ministerial Working Group. The Group was chaired by the then Minister for Local Government and Planning, Derek Mackay MSP; and other members included Paul Wheelhouse MSP, the then Minister for Environment and Climate Change, as well as the Leaders and Chief Executives of the three Island Councils. Over the course of six meetings the Group's discussions covered a range of issues including the Crown Estate, social and economic matters, energy, renewables, transport and governance.

8. In June 2014 on conclusion of the Group's work the Scottish Government published the '*Empowering Scotland's Island Communities*' prospectus.<sup>2</sup> This confirmed a commitment to the principle of subsidiarity and local decision making. The prospectus was a package of measures recommended by all members of the Island Areas Ministerial Working Group. It was predicated on the transfer of all powers to the Scottish

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<sup>1</sup> <http://www.shetland.gov.uk/OIOF/documents/ourislands-ourfuture-JointPositionStatement-17june2013.pdf>

<sup>2</sup> <http://www.gov.scot/Resource/0045/00452796.pdf>

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Parliament that independence would deliver, to ensure decisions best determined by island communities are made by island communities. Proposals were developed based on three underpinning objectives:

- promoting islands voice;
- harnessing island resources;
- enhancing islands wellbeing.

9. The package of proposals were also applicable to other comparable parts of Scotland – and, especially, nearly all were applicable to the other island communities within Highland, Argyll and Bute and North Ayrshire local authority areas. These proposals included plans to bring forward an Islands Bill, which would have, amongst other things, placed a duty on the Scottish Government and other relevant public authorities to ‘island-proof’ their functions and decisions, where those functions and decisions had an islands impact.

10. The Ministerial Working Group was re-convened in February 2015 and was tasked with taking forward the implementation of recommendations from the prospectus that could be delivered under the existing powers of the Scottish Parliament. The Group oversaw plans for a consultation on proposals for an Islands Bill. A Progress Update on Empowering Scotland’s Island Communities was published in March 2016 along with the Independent Analysis of responses received to the Consultation on Provisions for a Future Islands Bill.<sup>3</sup>

## Consultation

11. As part of the 2014-15 Programme for Government, the Scottish Government made a commitment to undertake a consultation on provisions for a future Islands Bill, building on the work undertaken by the Island Areas Ministerial Working Group.<sup>4</sup> The consultation ran from 30 September 2015 until 23 December 2015 and sought respondents’ views on the following areas:

- Island-proofing;
- Empowering Island Communities;

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<sup>3</sup> <http://www.gov.scot/Resource/0049/00496547.pdf>

<sup>4</sup> <http://www.gov.scot/Resource/0048/00486539.pdf>

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- A National Islands Plan;
- Statutory Protection to the Na h-Eileanan an Iar Scottish parliamentary constituency;
- Local Government Electoral Wards – populated islands.

12. A total of 192 responses were received from a range of individuals; community councils; third sector organisations; public bodies; representative bodies; trade bodies; trade unions; local authorities; private sector organisations and trusts; politicians; and political parties. The Scottish Government commissioned Reid-Howie Associates Ltd to undertake the independent, formal analysis of the consultation responses received and their report was published on 14 March 2016 along with all the non-confidential responses to the consultation.<sup>5</sup>

13. Further detail on the responses to the consultation is provided in relation to each Part of the Bill.

## Part 1 – Key definitions

14. Part 1 of the Bill sets out the important definitions regarding islands and island communities that are used throughout the Bill.

## Part 2 – national islands plan

### Policy objectives

15. Part 2 of the Bill places a duty on the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a 'National Islands Plan'. The purpose of the Plan is to set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities. Activity to improve outcomes takes place across the whole range of policies, strategies and services provided by the Scottish Government and the wider public sector and the national plan will link these aspects together. The national plan will provide an agreed strategic direction, not only for the Scottish Government, but for all Scottish public authorities that have an interest in improving outcomes for island communities. The plan will seek to focus resources and, where necessary, provide targets for key areas of activity.

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<sup>5</sup> <http://www.gov.scot/Resource/0049/00496550.pdf>

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16. The Plan will also provide the structure for reporting on the work the Scottish Government and its agencies are taking forward across a wide range of key policy areas to help sustain and support all of Scotland's island communities. It will help ensure that the momentum and focus that has been generated by the Our Islands Our Future campaign, the work of the Islands Strategic Group, and the passage of the Islands Bill itself, is maintained going forward.

17. The Bill provides that the first Plan must be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force. The Scottish Ministers would then be able to review the Plan at any time but they must begin a review of the Plan before the end of five years from the date the last Plan was published.

18. In preparing the new or any revised plan the Scottish Ministers must consult people and communities in the islands and those who will likely be affected by the proposals in the plan. The Scottish Ministers must lay a proposed Plan before the Parliament and then publish it after parliamentary consideration.

19. In addition, the Scottish Ministers must prepare and publish a National Islands Plan Progress Report on an annual basis following the publication of a new or revised plan. The Progress Report must provide an update on the progress towards achieving improved outcomes for island communities and any other information the Scottish Ministers consider appropriate. The progress report must also provide information on island-proofing activity that has occurred over the previous year. The progress report must be laid before the Parliament by the Scottish Ministers and then published.

## Consultation

20. Over 85% of those who expressed views as part of the consultation highlighted their support for the Scottish Government to introduce a National Islands Plan. Perceived benefits of such a plan included:

- Potential to address issues facing island communities, as well as to keep a focus on these, and tackle changing needs;
- An accountable framework for identifying objectives, actions and responsibilities.

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21. Many respondents to the consultation commented on what they saw as additional requirements for a National Islands Plan, e.g. that it should recognise the overall context and existing work; that local communities and relevant organisations should be involved and that there should be mechanisms for accountability, reporting and review.

22. The most commonly suggested lifespan for a National Islands Plan was five years, although other suggestions were made. Among the perceived benefits of a five-year period were that it would align with the timescales for parliamentary and political cycles. It would also allow time for longer term strategies to be put in place.

### Alternative approaches

23. It would be possible for the Scottish Government to report on their overarching strategic approach to supporting island communities without placing a legal requirement in legislation. In March 2016, the Scottish Government published *Empowering Scotland's Island Communities - A Progress Update*, which set out a range of activity being undertaken across Government to support island communities following the publication of the original prospectus in June 2014. Whilst this was a helpful update, and brought up to date the collaborative work of the Island Areas Ministerial Working Group, there was no formal requirement on the Government to provide such an update.

24. The commitment to place a legal duty on the Scottish Ministers to produce and report on progress with a National Islands Plan is one that has been welcomed by key stakeholders. The process of commissioning, drafting, consulting and reporting on a National Islands Plan will introduce a high level of rigour, transparency, scrutiny and parliamentary accountability to the work being undertaken by the Scottish Government to support island communities.

## Part 3 – duties IN relation to island communities

### Policy objectives

25. Part 3 of the Bill places a duty on the Scottish Ministers and other relevant public bodies to have regard to island communities in exercising their functions. Under the Bill an island communities impact assessment would need to be prepared when a new or revised policy, strategy or service is likely to have a significantly different effect on island communities

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from its effect on other communities (including other island communities). For the Scottish Ministers this also includes the development of legislation.

26. The duty created under the Bill is often referred to as ‘island-proofing’. The importance of island-proofing was recognised in *Empowering Scotland’s Island Communities*:

“The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector. Island-proofing consists of considering the particular needs and circumstances of island communities when the Scottish Government and other relevant public authorities are exercising their functions and making decisions.”<sup>6</sup>

27. The Bill seeks to ensure that island communities are not unreasonably disadvantaged due to their location. Island-proofing raises awareness of the needs and circumstances of island communities and the process will cover:

- identifying the potential direct or indirect consequences that new or revised legislation, policies, strategies or services might have on the inhabited islands of Scotland;
- ensuring a proper assessment of those consequences, if likely to be significant, is undertaken;
- adjusting legislative, policy and service proposals where appropriate to help ensure they address the needs of island communities.

28. This duty is a cornerstone of the Bill. It will ensure the interests of island communities are placed firmly and squarely at the centre of future legislative, policy and service considerations.

29. The duty will apply to all public bodies in Scotland whose functions and activities can impact on island communities. The public authorities must have regard to any guidance from the Scottish Ministers about the carrying out of the island-proofing duty. Before publishing any guidance the Scottish Ministers must consult those who appear to them to represent the interests of island communities and anyone else they consider appropriate.

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<sup>6</sup> <http://www.gov.scot/Resource/0045/00452796.pdf> (page 24)

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Public authorities will be expected to include information in their annual report on the impact of island-proofing on their functions and activities.

30. The Scottish Ministers will be expected to report on the impact of island-proofing as part of the annual update setting out progress with the Scottish Government's National Islands Plan. The progress report will be laid before the Parliament by the Scottish Ministers and as soon as reasonably practicable thereafter will be published.

## Consultation

31. In responses received to the consultation, there was a high level of support for the placing of a duty to island-proof within legislation. Almost all (91%) of those who expressed views believed that this should be done with the perceived benefits for doing so covering three common themes:

- Existence of specific issues impacting on islands (e.g. isolation; remoteness; environment and climate issues; and population issues);
- Need for a tailored approach to legislation, policy and services (rather than "one size fits all");
- Other benefits of island-proofing (e.g. more: joint working; equality; understanding of island issues; sustainability, accountability; empowerment; efficient use of resources; and economic benefits).

32. A small number of respondents mentioned drawbacks of island-proofing, which focused on a perceived lack of need for this, disagreement with the overall principle and concerns about potential negative consequences.

33. There was also a high level of support for the Scottish Ministers to have the power to issue guidance to other relevant public bodies related to island-proofing with almost 98% of those who expressed views believing this should be the case.

## Alternative approaches

34. It would be possible to adopt an island-proofing approach without a formal legislative duty. The Parliament's Standing Orders already require the government to set an assessment of the effects of a Bill, if any, on

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island communities.<sup>7</sup> However, stakeholders have expressed the view that there are aspects of previous legislation (including in secondary legislation which the Standing Orders do not cover) which would have benefitted from a more formal assessment on their impact on island communities.

35. Further, the Scottish Government could require and provide non-statutory guidance that Government Directorates should island-proof prospective legislation and policies. There would be a question on the extent to which this non-statutory commitment would be able to effectively influence decision making. The objective of the new island-proofing duty would ensure a more robust application and better consideration and integration of island issues at the outset of any policy-making process. The duty will also apply across a wide range of public sector organisations which engage and work with island communities, bringing more transparency and consistency to the consideration of island issues.

## Part 4 – representation of island communities

### Constituency of Na h-Eileanan an Iar

#### Policy objectives

36. Currently, under Schedule 1 to the Scotland Act 1998, Orkney and Shetland are fixed as two of the 73 constituencies for the purposes of elections to the Scottish Parliament: this ensures that their boundaries cannot be varied. The Na h-Eileanan an Iar Scottish parliamentary constituency does not have this statutory protection at present but section 13 of the Bill will provide this, using the powers transferred to the Scottish Parliament by the Scotland Act 2016.

37. Given this statutory protection from variation already extends to both Orkney and Shetland, it is appropriate that the only other all island constituency in Scotland, Na h-Eileanan an Iar, should benefit from the same protection.

#### Consultation

38. In consulting on this provision a large majority (86%) who expressed views signalled their support for giving statutory protection to the Na h-

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<http://www.parliament.scot/Parliamentaryprocedureandguidance/SOEd05Rev04201703.pdf>

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Eileanan an Iar Scottish parliamentary constituency. Reasons for this support included a need for fairness and equity, and parity with Orkney and Shetland. A further theme was the distinctive nature of the Western Isles and the need for provision of a distinctive islands “voice”.

## Alternative approaches

39. The alternative approach would be to maintain the status quo so that the statutory protection provided under Schedule 1 to the Scotland Act 1998 for both Orkney and Shetland constituencies would not be extended to Na h-Eileanan an Iar. This would mean that the Scottish Parliamentary constituency boundary for Na h-Eileanan an Iar could be changed following a review undertaken by the Local Government Boundary Commission for Scotland, which take place approximately every 10 years. Exempting the Na h-Eileanan an Iar Scottish parliamentary constituency boundary from the possibility of boundary review will mean that primary legislation would in future be required to vary its boundaries.

## Greater flexibility in electoral ward design for islands

### Policy objectives

40. The policy objective is to provide more flexibility to the Local Government Boundary Commission for Scotland (LGBCS) when looking at the representation of islands within a local authority and making recommendations.

41. Under section 1 of the Local Governance (Scotland) Act 2004 (the 2004 Act) each electoral ward in Scotland has to return three or four councillors. When designing wards, the LGBCS is required to make recommendations in accordance with that section and apply the rules set out in Schedule 6 to the Local Government (Scotland) Act 1973 (the 1973 Act), which include the requirement that the ratio of electors to councillors in each ward in a council area shall be, as nearly as may be, the same.

42. Para 2 of Schedule 6 to the 1973 Act provides that the LGBCS can depart from the rule about the ratio where there are special geographical considerations:

“The strict application of the rule stated in paragraph 1(2)...above may be departed from in any area where special geographical considerations appear to render a departure desirable.”

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43. In practice the combination of the requirements of the 2004 Act and 1973 Act that there must be three or four member wards means that populated islands may be placed in an electoral ward which also contains a significant proportion, and often a majority, of mainland population. This had led to concerns that the distinct interests of island communities may not be fully represented in council discussions.

44. The Bill provides the LGBCS the flexibility to recommend to the Scottish Ministers to propose electoral wards of one or two councillors to be created covering populated islands, if they deem this appropriate. It would be anticipated that any changes would be implemented in time for the 2022 Scottish local government elections.

## Consultation

45. Views on this proposal highlighted a high level of support for the Scottish Government to consider amending the Local Governance (Scotland) Act 2004 to allow the LGBCS the power to make an exception to the usual three or four member ward rule for use with respect to populated islands. A large majority (86%) of those who expressed their views of this were in favour of such an amendment.

46. Many respondents to the consultation identified perceived benefits of, or reasons for amending the Act, and a number of common themes emerged:

- Provision of an “island voice” and representation of the diversity of Scottish islands;
- The need for “local” representation and understanding of local issues;
- Promotion of fairness and democracy (e.g. to address an existing “democratic deficit” and strengthen local democracy and accountability).

47. A small number of respondents identified drawbacks with the amendment of the Act, focusing on: a lack of need; potential unfairness; cost; the impact on governance; and the potential for the same issues to affect other communities.

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## Alternative approaches

48. In order to provide for the opportunity for one or two member wards to be created covering populated islands section 1 of the Local Governance (Scotland) Act 2004 must be amended. The alternative would be to continue to rely on the existing law. However, a clear majority of respondents to the consultation were of the view that changes to the existing law was the preferred choice.

## Part 5 – Scotland island area marine development licences

### Policy objectives

49. A commitment was given in the ‘Empowering Scotland’s Island Communities’ prospectus that the Scottish Government would not seek to legislate to diminish the powers of the Zetland and Orkney County Council Acts 1974, and would progress as required any proposals from Comhairle nan Eilean Siar regarding which provisions from these Acts that would also be relevant and appropriate for the Western Isles to have. The 2015 consultation, therefore, asked if the Zetland and Orkney County Council Acts should be extended to cover other island authorities.

50. At the time of their enactment, the Zetland and Orkney County Council Acts provided certain regulatory powers, over the seas around their coast lines. These powers allowed the councils to exercise some degree of control on development during the oil era over much of the territorial sea around their coast lines (for Shetland then three nautical miles, now 12 nautical miles; and for Orkney around Scapa Flow and various harbour areas); granted certain financial powers to borrow, invest and participate in business; and in the case of Shetland, powers of compulsory purchase relating to Sullom Voe.

51. In exploring the legal aspects of the 1974 Acts it has become clear there are a number of difficulties in trying to directly amend or extend them to other island authorities. The age of the original Acts, the fact they were Private Acts, and the considerable changes to the legal landscape over a 40-year period means it would not be viable to amend or extend them.

52. Whilst the provisions of the Acts were extensive, due to the passage of time and subsequent legislation, current use of the Zetland Act by Shetland Islands Council is primarily focussed on the granting of works

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licences. Shetland Islands Council believes that the ability to issue marine works licences provides a degree of necessary local control over the waters around Shetland.

53. The Government is keen to provide other island local authorities with the opportunity to have more control in the development of the seas around their island communities. The Bill therefore provides a regulation-making power for the Scottish Ministers to establish a marine licensing scheme for development activities within the Scottish island marine area, whereby a person may not lawfully carry out those development activities in that area without obtaining a licence granted by a local authority. Should local authorities with inhabited islands wish to become a licensing authority for these purposes then they will be able to apply to Ministers in order to exercise these new licensing powers.

54. The regulations may make particular provision for the different aspects that a scheme can cover including:

- the types of development activity covered by or exempted from the scheme;
- the area and boundaries of the Scottish island marine area covered by the scheme;
- the procedure for application and issuing of licences;
- the charging of any fees for reasonable administrative costs in relation to licence applications;
- the enforcement of the regulations and penalties that may apply.

55. In passing the Marine (Scotland) Act 2010 and creating Marine Scotland, the Scottish Government was keen to create an open and transparent licensing process throughout Scotland. The Scottish Government believes this has been a success. Any new licensing regime for the islands would work alongside this national framework. Importantly the Bill requires that the Scottish Ministers must consult before laying a draft of regulations before the Parliament and any issues and concerns of stakeholders will be able to inform the development of regulations.

## Consultation

56. In consulting on additions to the existing Zetland and Orkney County Council Acts of 1974 views were evenly split on whether or not additions

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should be made. Some respondents indicated that additions should be made to “modernise” or “update” the Acts, and that the powers available to Shetland Islands Council should be mirrored for Orkney Islands Council. A few respondents stated that the only amendment required to the Orkney County Council Act 1974 was an extension of territorial jurisdiction similar to that in the Zetland County Council Act 1974.

57. Other comments made reference to the need for greater, local control of the seabed, coastal waters, harbours and the Crown Estate. A small number of respondents also highlighted impact on economic development; planning; and taxation.

58. On the question of the extension of powers to the Comhairle nan Eilean Siar and other relevant councils, over three quarters (77%) of those who expressed their views believed that they should be extended. The consultation on the Bill did not look specifically at how this would be done or particular issues, such as, marine licensing schemes. The Scottish Government would, therefore, want to carry out a full consultation with all those who might be impacted on by the creation of a new licensing scheme, and for that consultation to inform the development of any new scheme (and so this is provided for in section 18(7) of the Bill).

## Alternative approaches

59. As demonstrated by the consultation responses, there is clear support for the extension of similar powers granted under the Zetland and Orkney County Council Acts of 1974 to Comhairle Eilean nan Siar and other councils with responsibilities for island communities. There are however legal challenges to simply extending or amending the existing Acts, as outlined above. Based on the experiences of Shetland Islands Council with the Zetland Act the inclusion within the Bill of a provision to allow the granting of licences for any works in or under the sea, in the coastal waters surrounding islands in their area for up to twelve nautical miles, would seem the optimal approach to meeting the desire of the relevant local authorities. It should however be noted that this provision, whilst increasing local control, does pose a potential risk of increasing the regulatory burden on those who might wish to undertake developments in the coastal areas around islands.

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## Other issues raised in consultation

60. In the consultation responses on the question of devolving further powers to island councils and communities, a majority (73%) of respondents who expressed their views stated that the current powers of island councils, and councils with island responsibilities, were not sufficient to deliver positive outcomes for their local island communities.

61. The main reasons given by respondents for this view focused on:

- Issues with the nature of current powers and the approach to these (e.g. remote and “top-down” decision-making and some policy areas with a major impact on islands being outwith local authority functions);
- The need for equality between areas;
- The potential positive impact of additional powers (e.g. on inshore fisheries; coastal zone; on and offshore energy; transport; land ownership; responsiveness to island needs; and service delivery).

62. A small number of respondents indicated that, in their view, existing powers were sufficient and there was no need for additional powers.

63. A number of issues were raised for the Scottish Government to consider in the extension of powers. Small numbers of respondents, for example, raised concerns about local decision-making and democracy, or the potential extension of powers. Some identified further points for consideration (e.g. the potential impact on other organisations or key sectors; the potential costs; and the means of implementation).

64. In the context of providing greater local control and further devolution of powers to local authorities and communities, a number of specific areas highlighted in consultation responses, whilst not directly addressed in the Islands Bill, are being taken forward by the Scottish Government through other means. For example, the Marine Scotland Act 2010 provides scope for more local ownership and decision making through the ability to delegate regional marine planning to marine planning partnerships. The Scottish Government has already delegated to the first two partnerships in the Shetland Isles and Clyde marine regions, and they will each develop a

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regional marine plan for their area.<sup>8</sup> The Scottish Government intends to continue with this work and delegate to the remaining nine marine regions (including the Outer Hebrides and Orkney Islands) over the coming years.

65. In addition, the future management of the Crown Estate, something island authorities and communities are keen to be involved in, will be taken forward through a separate Crown Estate Bill. Terrestrial planning and a desire for a planning system which can respond to local distinctiveness will also be addressed through a separate Planning Bill. Over the last two years the Scottish Government has worked closely with local authority representatives of island communities to better understand the unique challenges faced in terrestrial planning within an islands context. This work, together with the responses received to the recent planning consultation, will help inform the development of the provisions of the forthcoming Bill and the wider programme of planning reform to ensure that island challenges and opportunities are taken into account within changes to the planning system and future policy as appropriate. The recent Community Empowerment Act is another example of the Scottish Government's commitment to supporting subsidiarity and local decision making.

66. Further local control and influence can also be achieved through non-legislative routes and there are a number of different strands of work currently being taken forward by the Scottish Government to improve the role and influence of local authorities, and island communities in decision making. For example, the Islands Strategic Group provides a quarterly forum through which local authority representatives of island communities can raise issues of strategic importance with Scottish Ministers.<sup>9</sup> Alongside this, the Islands Transport Forum provides a mechanism for political leaders and other key stakeholders to discuss with Scottish Ministers

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<http://www.gov.scot/Topics/marine/seamanagement/regional/partnerships/Clyde>;

<http://www.gov.scot/Topics/marine/seamanagement/regional/partnerships/Shetland>

<sup>9</sup> <http://www.gov.scot/Topics/Government/local-government/Islands/IslandsStrategicGroup>

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specific strategic matters relating to ferry and air service provision and other transport issues across Scotland's island communities.<sup>10</sup>

67. The Scottish Government's Programme for Government 2016-17 set out plans to review local authority roles and responsibilities, and to decentralise local authority functions, budgets and democratic oversight to local communities.<sup>11</sup> The Scottish Government will work closely with local government and wider public service partners to put in place decision-making arrangements which strengthen local democracy, protect and renew public services and refresh the relationship between citizens, communities and councils. This will further support and empower, not just island communities, but all communities across Scotland.

68. Supporting all of these strands of work will be ongoing policy work to address the unique challenges presented in an islands context by issues relating to depopulation; energy; housing; transport; digital connections; and sustainable economic development.

## Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

### Equal opportunities

69. The Scottish Government has assessed the potential impacts of the Bill on equal opportunities. The Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly. The Bill's objective is to improve outcomes for island communities by ensuring that there is a sustained focus across Government and the wider public sector on meeting the needs of island communities. It is anticipated that such a focus will be positive but impacts may not be specific to any one protected characteristic, but to island communities more broadly.

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<sup>10</sup> <https://www.transport.gov.scot/our-approach/strategy/islands-transport-forum/>

<sup>11</sup> <http://www.gov.scot/Resource/0050/00505210.pdf>

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## Human rights

70. The Scottish Government considers that the Bill does not give rise to any human rights concerns and complies with the European Convention on Human Rights (ECHR). It is anticipated that the focus of the Bill on improving outcomes for island communities will be positive with respect to human rights.

## Island communities

71. The Bill introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the wider public sector to meet the needs of island communities both now and in the future.

## Local government

72. The Bill impacts on local government in a number of ways described throughout this memorandum.

- **National islands plan:** the Scottish Government would expect local government to be a key partner in the creation of the National Islands Plan.
- **Duties in relation to island communities:** local authorities with inhabited islands in their area will have to have regard to the new duties in relation to island communities and will need to produce an island communities impact assessment should this be required.
- **Representation of island communities:** the relevant local authorities may wish to respond to the proposed review by the Local Government Boundary Commission for Scotland on the electoral arrangements in their area.
- **Scotland island area marine development licences:** local authorities with inhabited islands in their area will be able to make an application to the Scottish Ministers to designate an area as one in which a licence is required from the local authority to carry on a development activity (an "island licensing area").

## Sustainable development

73. The potential environmental impact of the Bill has been considered. A pre-screening report confirmed that the Bill has no impact on the environment and consequently that a full Strategic Environmental

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Assessment does not need to be undertaken. It is, therefore, exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

74. Sustainable development is integral to the Scottish Government's efforts to improve outcomes for all communities across Scotland. The Government Economic Strategy, which has Inclusive Growth at its heart, sets out the Scottish Government's dual ambition to tackle inequality and boost competitiveness, so that the benefits of a flourishing Scotland can be shared by all, including island communities.

75. The key objectives of the strategy are:

- to ensure Scotland's government and the whole of the public sector are aligned toward one Purpose;
- to ensure Scotland's public sector - central and local government, the enterprise bodies and other key agencies - work collaboratively with the private, academic and third sectors, in pursuit of the Purpose and economic recovery;
- to inform the outcome-based framework which enables the people of Scotland to judge us on the results that we achieve; results which reflect real and meaningful improvements in public services and quality of life; and
- to provide leadership to support Scotland's transformation to a low carbon economy.

76. It is recognised that, after the Bill has been passed, the various Parts will need to be considered carefully in relation to sustainable development and any regulatory and environmental impacts. Scotland's National Marine Plan<sup>12</sup> provides a comprehensive overarching framework for all marine activity in Scotland's waters. The Plan is designed to enable sustainable development and use of Scotland's marine area in a way which will protect and enhance the marine environment whilst promoting both existing and emerging industries. Therefore any decision which may arise from the development of regulations in relation to island marine development licences will need to be consistent with the National Marine Plan.

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<sup>12</sup> <http://www.gov.scot/Publications/2015/03/6517>

This document relates to the Islands (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 9 June 2017

77. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and the Bill already provides that before laying a draft of the regulations the Scottish Ministers must consult with those effected by the regulations. The Scottish Government is also committed to undertaking full Strategic Environmental Assessments if and when necessary.

78. Sustainable development and the Government's Economic Strategy will also inform the development of the National Islands Plan provided for in Part 2 of the Bill which will set out the main objectives and strategies in relation to improving outcomes for island communities and will be developed through consultation with stakeholders.

79. The new duties in relation to island communities outlined in Part 3 of the Bill will ensure that the interests of island communities are at the centre of future legislative, policy and service considerations. For the public sector organisations who engage and work with island communities this will help ensure that their decision making processes will better and more consistently consider the issues that impact on island communities. The Scottish Government would anticipate that the duty would have a positive impact on sustainable development but that will ultimately depend on the new or revised legislation, policies and services that are proposed in future and the response of both public sector organisations and the island communities themselves.

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# Islands (Scotland) Bill

## Policy memorandum

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