RURAL ECONOMY AND CONNECTIVITY COMMITTEE

PROPOSED NATIONAL ISLANDS PLAN

SUBMISSION FROM EWAN SUTHERLAND

Strategic objective 6 – To improve digital connectivity

Scottish Ministers admit, somewhat obliquely, that telecommunications and Internet access are reserved matters,¹ though this is set out clearly in the Scotland Act (as amended).² The point was made in a similar style to the REC Committee by the Cabinet Secretary, who also pointed out that he was a qualified lawyer.³ However, Scottish Ministers have never set out what that means, namely that the Scottish Parliament cannot legislate on the matter and that Scottish Ministers cannot spend money on the matter since that would be ultra vires.

It follows that Scottish Ministers are unable to evaluate policy options since they do not have the means to legislate, to issue policy guidelines or to provide state aid. At present, the last of these requires the additional approval of the Competition Directorate-General.⁴ In future it may require approval by CMA. Consequently, Scottish Ministers cannot observe good governance by conducting an impact assessment of a range of options.

Her Majesty's Government (HMG) has some powers to legislate and to issue policy guidelines, within the EU acquis. For the present, HMG is actively involved in the preparation, scrutinising and implementation of EU legislation (e.g., EECC).⁵ National initiatives in recent years include declaring broadband as part of universal service,⁶ funds to accelerate the deployment of full-fibre broadband and coverage of 4G mobile networks.⁷

The Scottish Affairs Committee examined issues of broadband in remote and rural areas.⁸ While it “urged the UK and Scottish Governments to work together to address this issue” there is little evidence of this in the Islands strategy by Scottish Ministers.

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² http://www.legislation.gov.uk/ukpga/2016/11/contents
The formal mechanism by which Scottish Ministers interact and coordinate with HMG is through the Joint Ministerial Committee (JMC). However, there is remarkably little evidence of use of this mechanism, certainly in terms of reporting to either parliament. Nor is there evidence of coordination between the two legislatures.

Ministers in both Edinburgh and London appear to prefer bilateral dealings, though these are so lacking in transparency that it is seldom clear if they have been held and what positions might have been taken. Scottish ministers have periodically referred to correspondence, but this seems rare and, again, appears to be undisclosed.

The Office of Communications (OFCOM) is the principal United Kingdom regulator for telecommunications, taking decisions within the framework of the EU acquis and somewhat limited national legislation, notably the Digital Economy Act.

Scottish Ministers refer to organising a meeting between representatives of Scottish islands and OFCOM. In doing so they seem to view the problem as one of political lobbying or pleading a case rather than one of providing evidence for techno-economic decisions that must be defensible before the Competition Appeal Tribunal (CAT).

Indeed, there appears to be a dearth of data and information that might be used to justify any decisions by OFCOM. Scottish ministers allege there is a need for improvements in fixed and mobile networks but provide remarkably little evidence of or measurements of any deficiencies, any causes thereof or the likely economic benefits of improving coverage. Without this sort of detail it is hard to see how OFCOM could successfully defend any decision in the not improbable event it was challenged before the CAT.

The question of network resilience is raised but not given serious consideration. Clearly the location of some of the equipment presents logistical challenges in the event of failure. Evidence was taken some years ago at the Scottish Affairs Committee. If the issue is to be addressed properly, then some assessment has to be made of the regulatory framework for network resilience, perhaps drawing on the ENISA reports. If the resilience requires to be improved then the question of costs arises and whether HMG should pay or the costs should be borne by users (i.e. cross-subsidy).

On page 25 of their document, Scottish Ministers appear to be suggesting that broadband might help reduce travel and thus greenhouse gas emissions, the term used is de-carbonisation. However, increased availability of networks might increase travel by encouraging tourism through use of social networks. One mechanism would be the posting of photographs on Instagram.

There appears to be a failure on the part of Scottish Ministers to consider the likely effects of their R100 programme on competition and its likely interference with UK initiatives. HMG has made clear its intention to move ahead with full fibre broadband, indeed Boris Johnson has undertaken to deliver 100 per cent fibre to the home by Halloween 2025 advancing the target previously adopted by HMG. It is far from clear why work on DSL broadband is being funded if FTTX broadband is to replace it in the short term.

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9 [https://www.catribunal.org.uk](https://www.catribunal.org.uk)
11 Natasha Lomas (23 July 2019) “Freshly elected as UK’s next PM, Boris Johnson pledges full fiber broadband bonanza” *Techcrunch*. 
Considerable work is required by Scottish Ministers to explain how they engage with UK ministers, how their policies fit with those and how they are adding value to them. The decision to prioritise digital connectivity is sensible, though number 6 might be thought low, given potential benefits or high given the very limited scope for actions by Scottish Ministers. A proper economic analysis and greenhouse gas emissions analysis would be necessary for this.