

## Island-proofing: Meeting the needs of Island communities



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Scotland's islands have an international reputation for their beautiful scenery and idyllic landscapes. However, island communities often face challenges, such as geographic remoteness, transport and connectivity issues, not experienced to the same degree elsewhere in Scotland. The Scottish Government, working in partnership with the island communities, has introduced a number of policy initiatives to try and tackle some of these issues to better meet the needs of islands communities now and in the years to come.

Among these initiatives, is the proposal for a legislative framework against which the voice of islands can be promoted, island resources harnessed and their wellbeing enhanced.

The Scottish Government's prospectus 'Empowering Scotland's Island Communities', published in 2014, set out a series of measures recommended by all members of the government's Island Areas Ministerial Working Group, and confirmed a commitment to the principle of subsidiarity and local decision making. The Group was tasked with using the existing powers of the Scottish Parliament to deliver the recommendations set out in the prospectus, in particular, the duty on the Scottish Government and other relevant public authorities to 'island-proof' their functions and decisions where these have an islands impact. This has been supported by Shetland, Orkney and Western Isles Councils which have long sought the devolution of more powers to island councils.

Following a public consultation in 2015, the Islands (Scotland) Bill was introduced to the Scottish Parliament on 9 June 2017. The Bill incorporates many of the proposals endorsed in the consultation.

### **The Islands (Scotland) Bill**

The Bill provides a selection of measures to support the Government's aim to ensure that the needs of island

communities are considered by Government and the public sector; that their unique needs are supported; and to encourage conditions for sustainable economic growth.

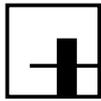
### **What is an island?**

Key definitions are used throughout the Bill to identify islands and island communities. An 'island' is described as "a naturally formed area of land which is surrounded on all sides by sea (ignoring artificial structures such as bridges), and above water at high tide". So the Isle of Skye, although attached to the mainland by a bridge, falls within the definition, as do tidal islands such as Oronsay. To be an 'inhabited island' an island must be permanently inhabited by at least one individual.

The definition of island community is broadly drawn: an 'island community' is a community which consists of two or more individuals, all of whom permanently inhabit an island (although it need not be the same island), and is based on common interest, identity or geography.

### **A National Islands Plan**

Scottish Ministers have a duty to prepare a 'National Islands Plan'. The Plan should set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities. Once the Bill is in force, The Plan must be presented to the Scottish Parliament within 12 months.



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The Plan must be reviewed every five years, in consultation with individuals and communities from the islands which are likely to be affected by the proposals. Once the Plan is put into effect, annual reports must be prepared, detailing how outcomes identified in the Plan have improved, and the steps taken by Scottish Ministers to comply with their duties in relation to island communities imposed by the Bill. This should increase transparency and parliamentary accountability regarding decisions taken affecting island communities.

### Duties in relation to Island communities

Scottish Ministers and other public authorities must have regard to island communities in exercising their functions, with provisions for compliance and reporting. When a new policy or legislative development is proposed that is likely to have a significantly different impact on island communities compared with the effect on other communities, the relevant authority must undertake an assessment of the impact on such communities.

This duty has been coined as ‘island proofing’, and not unsurprisingly, received support from 91% of persons responding to the 2015 consultation. Most felt there was a need for a ‘tailored approach’ to legislation, policy and services with respect to island communities.

### Representation of Island communities

Orkney and Shetland currently enjoy a statutory protection which ensures that they are fixed as two of the seventy-three electoral constituencies for elections to the Scottish Parliament. This protection is to be extended to cover Na h-Eileanan an Iar (formerly the Western Isles) to demonstrate fairness and parity between these islands. This status protects the constituency from variation following any boundary review by the Local Government Boundary Commission for Scotland. An exception may be made to the number of councillors required in respect of local government electoral wards for areas with inhabited islands, relaxing the three or four member rule to one or two members. This should provide greater flexibility in electoral ward design for islands.

### Development in the Scottish Island marine area

Arrangements are made for island councils to have a say in proposals for development in the Scottish island marine area. Island councils will have power to approve and block proposals for marine developments around islands, extending out to 12 nautical miles. Island councils may apply to the Scottish ministers for the power to grant licences for development activities in the island marine area, and any development completed without a licence would be unlawful. If the Scottish Ministers are satisfied that the area includes an inhabited island then they may apply

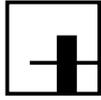
the scheme. The scheme may make provisions to define permitted and excluded developments, and provisions clearly defining the area boundaries. They may also make provisions on the procedure for applying for a licence, how the scheme interacts with other marine licences, how it will be enforced, and if there are any defences for developments carried out without a licence. Additionally, the scheme may make provisions on maintaining a public register of licences.

Development activity includes construction, alteration or improvement works of any description in or over the sea, or on or under the seabed, and any form of dredging, but specifically excludes activities relating to oil and gas, defence and pollution.

At this point, the proposals are fairly malleable; enactment of the Bill will not automatically generate a licence scheme ready to be applied, as the repeated use of the word ‘may’ indicates that this part of the legislation is permissive, not mandatory. After the Bill has been passed, it is likely there will be a lengthy consultation on what form a licensing scheme should take. However, there are some indications of what should be included in a prospective licensing scheme: the fee charged to an individual by a local authority to obtain a licence must not be more than the cost of processing that application; maximum penalties for contravening the scheme are laid down; and some key exceptions to the licensing scheme are set out. Those who are already carrying out marine developments near an island need not worry, as if the work is started before the scheme is introduced, a licence will not be required. The licensing scheme proposal would deliver significantly enhanced powers to island councils, giving them much more of a say over commercial activities in the waters surrounding their islands. This will enable them to have a practical and tangible influence on the strategic development of the area, and ensure those decisions can be made by those on whom they will have the most impact.

### The Future for Islands

The introduction of the Bill to the Scottish Parliament has been described as an ‘historic milestone’ for Scotland’s island communities: many island communities have welcomed the measures, in particular ‘island proofing’ and the requirement for a National Islands Plan. It is widely expected that the proposals will bring further benefits to island communities particularly in relation to marine development. The licensing scheme proposed by the Bill will give many island communities the opportunity to influence development in the marine environment that surrounds them.



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Nevertheless, it is difficult to predict what form the final scheme will take, and how the other provisions in the Bill will be applied as the proposed legislation gives the Scottish Ministers discretion regarding the implementation of the provisions. Publication of the Bill in this form does however signal the Government's commitment to improving public sector derived outcomes for island communities.

The Bill is not expected to be passed until sometime in 2018, and there is likely to be more consultation on the detail, once that happens. Therefore, it is important for those likely to be affected including developers, island communities and other key stakeholders to make sure they have their say in those consultation processes, and maximise the benefits for island life of these proposals.



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