

**Islands (Scotland) Bill
Legislative Progress**

Action

Stage 2 consideration

1. The Scottish Parliament's Rural Economy and Connectivity Committee considered the Islands (Scotland) Bill over 2 sessions, on 21 March and 28 March 2018. Amendments in 3 areas are of specific interest and relevance to the Commission.

Section 14

2. An amendment in the name of the Minister for Transport and the Islands changed Section 14 of the Bill to allow use of one or two members in a ward which "wholly or partly", rather than "wholly or mainly", consists of an inhabited island:

14 Number of councillors in wards with inhabited islands

In section 1 of the Local Governance (Scotland) Act 2004 (electoral wards), after subsection (2), insert—

"(2A) But, in relation to an electoral ward consisting wholly or partly of one or more 5 inhabited islands (within the meaning of section 1(2) of the Islands (Scotland) Act 2018), an order made under section 17 of the 1973 Act may determine that the number of councillors to be returned is either one or two."

3. This change was in response to the Stage 1 Committee report which recommended that the Scottish Government should follow the suggestion of the Commission to amend the Bill by changing the words to "wholly or partly" to increase the flexibility in what can be proposed in order to "better balance a ward".
4. There was no other discussion of the power to create 1 or 2 member wards.

Relevant authorities to whom islands proofing duty applies

5. Colin Smyth MSP successfully moved amendment 49 which added the Commission to the Bill's schedule of relevant authorities, arguing that this would "strengthen the protection of representation and participation in island communities". The Minister had expressed concern about the independence of the Commission and the legislative focus of its work but in summing up did not oppose the amendment. There was a vote on the amendment which resulted in its being passed.
6. Relevant authorities will be subject to the island-proofing duty which states that an authority must have regard to island communities in carrying out its functions. A relevant authority must also prepare an island communities impact assessment in relation to a policy, strategy, or service, which, in the authority's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions.

7. This is explained further in the Bill's Policy Memorandum, an extract of which is at Appendix A. It is not known at this stage what future Ministerial guidance may offer by way of direction (the guidance has not yet been drafted by Scottish Government and will be subject to consultation) but clearly it cannot override the existing legislative requirements upon the Commission when conducting reviews. The duty will not come into force until the guidance is prepared and this could take up to a year. The Commission may wish to consider the degree to which it fulfils the intent of the legislation in advance of its implementation.
8. It could be argued that the conduct of the review itself meets the requirement to have regard to islands communities; in other words there may be little additional work required to demonstrate regard has been had to the interests of islands communities. In undertaking its future work, including the forthcoming islands reviews, the Commission will need to consider the extent to which it is responsible for relevant "policies, strategies or services" and the requirement for an impact assessment. This may be an area where legal advice would be helpful but awaiting the guidance from Scottish Government seems sensible for the time being.
9. There is a power for Ministers to amend the schedule of relevant authorities by regulation. In order to be removed from the schedule, the Commission would almost certainly have to demonstrate that the duty inhibited its ability to carry out its statutory duties and that seems unlikely to be the case.

Shetland mapping requirement

10. Tavish Scott MSP tabled an amendment which would require Shetland to be placed in its correct geographical position when presented in a map rather than in a box as frequently happens. The Minister explained that the Scottish Government Permanent Secretary had already issued a standing instruction to the SG publishing contractor to ensure that images of Scotland in future publications should seek to portray accurately the location of all Scotland's islands—not just Shetland. The Minister offered to write to all Scottish public authorities, highlighting the specific issue and to encourage them to follow the Scottish Government's lead on the matter. He also offered to discuss with Mr Scott, or any other members who represent island communities who have concerns on that issue, other practical ways to reinforce that message.
11. Mr Scott withdrew the amendment pending discussions with SG; it was not wholly clear whether he intended to pursue a further amendment at stage 3 or rely on non-legislative measures.
12. The Commission's most recent publications (the reports of the 5th Reviews of Electoral Arrangements) show the map of Scotland with all islands in their correct position. Some whole of Scotland maps and posters have boxed Shetland as the map scale requires this to ensure sufficient detail of the mainland. The Secretariat will monitor developments and seek to apply best practice in all aspects of mapping.

Next steps

13. Stage 3 of the Bill is now expected in late May. The Secretariat will write to the Commission with an update on any issues or amendments arising at that point.

Conclusion

14. The Commission is invited to:

- note the progress of the Bill;
- note the stage 2 amendments, in particular the addition of LGBCS to the list of relevant authorities.

Secretariat
May 2018

EXTRACT FROM POLICY MEMORANDUM (AT TIME OF INTRODUCTION)

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 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.”

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. 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.