

Islands Reviews: Initial meetings with Orkney Islands Council, Shetland Islands Council and Comhairle nan Eilean Siar

Action

1. The Commission is invited to consider the reports of the meetings with the three islands councils and agree its approach to councillor numbers and ward design in light of the issues raised.

Background

2. LGBCS Paper 2440 was considered by the Commission at its meeting in May 2018. This raised issues for discussion with the 3 islands councils concerning the forthcoming islands reviews, in particular councillor numbers; the use of 1 or 2 member wards where a ward contains an inhabited island and any ward design considerations; and consultation with the council and communities;.
3. The meeting with Shetland Islands Council (SIC) was held on 18 June in Lerwick. The meeting with Orkney Islands Council (OIC) was on 10 July in Kirkwall. The meeting with Comhairle nan Eilean Siar (CnES) was in Stornoway on 12 July. Reports of each of the three meetings are attached in Appendix A.

Key issues arising

4. At each meeting the Commission summarised the 5th Reviews process and outcome and outlined the changes introduced by the Islands (Scotland) Act 2018. The particular areas of interest in the Act which were highlighted were the Commission becoming subject to the island-proofing duty; the ability to use one or two member wards where they wholly or partly comprise an inhabited island; the protection for na h-Eileanan an Iar Scottish Parliament constituency and the Shetland mapping requirement. Of these areas, the use of one and two member wards is of most relevance to the forthcoming reviews.
5. Drawing on the views expressed by the 3 councils, the Secretariat's consideration of the key issues is set out below.

Island-proofing duty

6. This part of the Act, which requires listed bodies including LGBCS, to have regard to the needs of islands communities, is not expected to come into force for some months pending preparation of, and consultation on, Scottish Government guidance. The Commission has agreed that it would wish to comply with the spirit of the legislation nonetheless. It does seem that for the Islands reviews, the conduct of the review itself, by its very nature, takes account of the islands communities. It is not therefore obvious that any further specific action needs to be taken and no particular points were highlighted by the councils.

Councillor numbers

7. The Commission previously agreed to use the 5th Reviews methodology, with the electorate data from December 2017 and the number of councillors for each of the 3 councils based on that approach is set out below:

Council	December 2017 electorate (excluding attainers)	Current councillors	5th Reviews final recommendation	Based on December 2017 electorate	With 10% cap
Na h-Eileanan an Iar	21661	31	26	27	28
Orkney	17038	21	21	21	21
Shetland	17729	22	22	22	22

8. In the meetings with the Commission, no council argued against the methodology nor at this stage for a different number of councillors although CnES expressed a view that effective ward design should drive the councillor numbers i.e. if the best pattern of wards necessitates a different number then that should be considered.
9. On that basis the Secretariat recommends that initial ward design options are prepared on the basis that:
- Orkney has 21 councillors
 - Shetland has 22 councillors
 - Na h-Eileanan an Iar has 28 councillors
10. In each councillor area, if ward designs with different councillor numbers can produce a better fit to the schedule 6 rules then these options will also be presented; using councillor numbers more than 10% from what is suggested by the methodology would only be considered exceptionally.

Ward design

11. Principles for consideration were set out in Paper 2440 and are revisited below:

- **that we continue to work to deliver effective and convenient local government and meet the schedule 6 requirements**
Nothing in the Islands Act changes the overarching framework within which the Commission works, and it is recommended that it is emphasised during the conduct of the reviews. All 3 councils seemed to take this as read.
- **whether the presumption is that 3 and 4 members remain the norm, as the “default” number across Scotland as a whole, and that we look for defined circumstances in which we depart from the norm. Such circumstances might include where an island has a clear community, challenging transport links to other areas which would need to be incorporated within a 3 or 4 member ward.**
All three councils seemed to accept or advocate that 3 or 4 would remain the norm. Each expressed slightly different views on the potential use of one or two member wards, reflecting different local circumstances. All three councils viewed use of single member wards as exceptions to a pattern of multi member wards.

OIC did not cite any examples where it felt use of one or two would improve the current arrangement. CnES and SIC both had examples of where single-member wards might better reflect the islands geography and communities. In Shetland, this was in Whalsay while in CnES Barra and Vatersay was suggested. SIC and CnES also suggested a number of areas where two-member wards might be appropriate.

- **whether there is merit in trying to ensure a pattern of wards that as far as possible are of similar size to avoid voter confusion and any sense of unfairness between wards within a council area.**
None of the 3 islands councils seemed to think a mixed pattern would be a particular issue, neither causing confusion to the voters nor a sense of unfairness amongst councillors. However, the Commission may still consider it in the interests of effective and convenient local government to try and ensure a consistent pattern as far as is possible.
 - **whether it intends to maintain a target of 10% parity and what its aim would be where special geographical conditions apply.** 10% remains a reasonable target for parity, in line with the Venice Commission recommendations adopted during the 5th Reviews. Discretion to depart from this target remains when special geographical circumstances apply. The Commission will wish to give thought to how it defines these circumstances for example by reference to the connectivity of an island to the mainland or other islands or the transport links to the rest of the ward.
12. The Secretariat recommends that it prepares a ward design option for each council area, based on its understanding of the views initially expressed by the 3 councils and consider the outcomes in terms of parity.
13. Notwithstanding the views of each council, the Schedule 6 rules require the number of electors per councillor to be as near as may be the same and the Secretariat will prepare further options where, compared to the council-preferred option, these:
- Improve on parity or
 - Appear to better reflect community ties without resulting in unacceptable parity
 - Appear to better reflect community ties regardless of the impact on parity if special geographical circumstances are deemed to apply

Other issues

14. One issue raised during the meetings was the perceived electoral advantage for a candidate residing in the larger or largest community in a multi member ward or in a single member ward with communities of unequal size. Electoral advantage is not an issue the Commission considers. However, effective and convenient local government does require councillors to be able to effectively represent their ward and residents to be able to participate effectively in democracy – considering the balance of communities between different parts of a ward remains relevant therefore.

15. In addition, the Policy Memorandum that accompanied the Islands (Scotland) Bill on introduction set out:

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

16. It would appear therefore that part of the thinking behind the new legislation was to avoid, where appropriate, the interests of an inhabited island being neglected as the smaller part of a large ward. However, it is not evident that in all cases being the smaller community would be detrimental. In some cases there may be a perceived strength in shared representation with the mainland or with a larger community with which there were strong links.

17. A second issue raised was the question of residency of a candidate for election. While this is not of direct relevance to the Commission, rules regarding eligibility to stand as a councillor require that a prospective candidate must be:

- at least 18 years old on the day of nomination, and
- either a British citizen, an eligible Commonwealth citizen, or a citizen of any member state of the European Union, and
- meet at least one of the following four qualifications:
 - a. You are registered as a local government elector for the local authority area in which you wish to stand on the day of your nomination.
 - b. You have occupied as owner or tenant any land or other premises in the local authority area during the whole of the 12 months before the day of your nomination.
 - c. Your main or only place of work during the 12 months prior to the day of your nomination has been in the local authority area.
 - d. You have lived in the local authority area during the whole of the 12 months before the day of your nomination.

18. There is therefore no requirement for a candidate to reside in the ward which they intend to stand in. While the Islands Act does not change the current position, there is the possibility of a single member island ward being represented by someone on the mainland, theoretically “worsening” the representation offered by a multi-member ward with a councillor resident on the island. (For example, within the 3-member Arran and Ardrossan ward, 2 current councillors reside on Arran – if it became a single member ward that clearly would not be the case).

Consultation

19. Each of the councils was open to helping the Commission find the best method of consultation with the public and a further paper on this will be brought to the next meeting. Based on discussions so far, options for consultation include a mix of: engagement with representative bodies, such as the Association of

Community Councils in Shetland; use of established networks such as “Orkney Voice”; and focussed public meetings in specific areas. These would be in addition to the established use of press releases, public notices, social media and display points. Any preliminary views that the Commission has are invited.

Officer contacts

20. All three councils were content to provide an officer as a point of contact during the reviews to facilitate. The Secretariat has been in touch with all three to begin the process of establishing forecast electorate data which is required in order to ensure that, in line with the legislation, the Commission has regard to likely changes in the number and distribution of the electorate over a 5-year period.

Next steps

21. Subject to the Commission’s views on the main issues, the Secretariat will prepare ward design options for each of the council areas, for consideration at the meetings arranged for October and December. Alongside this a consultation plan will be developed and a paper brought to the October meeting.
22. The Secretariat will also prepare a draft “Guidance Booklet” for the reviews of the 3 islands councils. Similar to that used for the 5th Reviews of Electoral Arrangements, it is proposed that this will set out the legislation, policies and procedures that the Commission intends to follow. The intention would be that the booklet would be published at the start of the reviews.
23. At the time of writing, the relevant provisions of the Islands (Scotland) Act have not yet been commenced but this is expected to happen in September 2018. Once the provision relating to the use of 1 or 2 member wards (s.19) and the requirement that the Commission review the 6 councils with inhabited islands as soon as possible (s.20) are in force, the Commission will need to consider timing of an announcement formally notifying the start of the Review. It is suggested that this is done by means of a news release and a draft will be brought to the October meeting.
24. While consistency will be important when the Commission comes to undertake the reviews of the 3 mainland councils with inhabited islands, it is not necessary for the Commission to follow the same approach rigidly. Different issues may arise during the initial meetings with Argyll and Bute, Highland and North Ayrshire and a revised guidance booklet developed reflecting and differences in approach that the Commission considers appropriate. The Secretary wrote to the Chief Executives and Leaders of the 3 mainland councils in April 2018 and undertook to write again early 2019 to set up preliminary meetings to discuss the review in more detail. The reason for delaying the reviews of these 3 councils was in part to recognise the different issues that may arise and in part because of the expected legislation following the Scottish Government electoral reform consultation which may allow use of 2 and 5 member wards across Scotland.

Conclusion

25. The Commission is invited to:

- consider the reports of the meetings with the 3 islands councils
- discuss the ward design issues set out in paragraph 11
- offer any views at this stage on consultation approach (paragraph 19)
- consider next steps (paragraphs 21–24)

**Secretariat
September 2018**