

Agenda Item	17
Report No	HC/32/17

HIGHLAND COUNCIL

Committee: The Highland Council

Date: 7 September 2017

Report Title: **Islands (Scotland) Bill: Draft Consultation Response**

Report By: The Chief Executive

1. Purpose/Executive Summary

- 1.1 The attached report and appendix sets out some of the background to the Islands (Scotland) Bill and provides a draft response to the specific questions raised by the Rural Economy and Connectivity Committee of the Scottish Parliament in their call for evidence.
- 1.2 In summary there are 5 main sections to the Bill:
- i. A requirement for the Scottish Government to consult on and publish a National Islands Plan.
 - ii. A requirement for all relevant public bodies to 'island-proof' changes in policy or the introduction of new policies or legislation.
 - iii. Protection for the electoral constituency of Na h-Eileanan an Iar (Western Isles) - placing it on par with Orkney and Shetland.
 - iv. Enabling the Local Government Boundary Commission to have greater flexibility in allowing 1&2 member wards for islands, where appropriate.
 - v. Permitting local authorities to apply for Marine Area Development Licences so they can have greater control over developments in their areas.

2. Recommendations

- 2.1 Members are asked to
- i. Approve the draft Council response to the Islands (Scotland) Bill Consultation.
 - ii. Note that there will be further opportunities to engage during the passage of the Bill, including an oral evidence session in Edinburgh on 20 September 2017.

3. Background

- 3.1 The Scottish Government, together with the Leaders of the 3 Island councils formed the Island Areas Ministerial Working Group to consider how Scotland's island areas could be supported and empowered. In 2014, the Working Group produced a prospectus entitled *Empowering Scotland's Island Communities* which set out a number of proposals for island communities. In 2015 the Ministerial Working Group was broadened to include all local authorities with island communities, including the Highland Council, and the Islands (Scotland) Bill has come out of this workstream.
- 3.2 All the Council's political/member groups have been invited to provide input into this response and councillors representing island communities have specifically been asked to feed in any comments and concerns to assist in the drafting of the Council's reply to the call for evidence.

4. Draft Response to the Consultation

- 4.1 The Highland Council formed a members' working group to develop a cross-party response to the original draft proposals for the Bill and this was submitted in December 2015. The council's response requested a number of additional powers and protection against a range of challenges faced by island communities, only some of which have been accommodated in the resultant Bill. The draft council response attached at Appendix 1 consequently reiterates some of these earlier points regarding revenues from offshore renewables; additional powers to enable local authorities to respond to the challenges of delivering services like education; and legislating to protect and enhance digital and transport connectivity.
- 4.2 The Council also asked for local authorities to have more control over marine activities in their areas and the draft Bill does provide the opportunity for councils to apply to a new marine licensing scheme. The detailed arrangements for the scheme will be set in Regulations, on which the Scottish Government will be required to consult. Consequently, the attached response welcomes the new arrangements in principle but reserves final judgement until the details are clearer.
- 4.3 The Islands (Scotland) Bill does not legislate on the future management of the Crown Estate as this will be taken forward in a separate piece of legislation, yet to be published. The Highland Council is a member of the Ministerial Stakeholder Group.
- 4.4 In line with the council's earlier response, the attached draft submission is supportive of the intention to introduce a requirement for public authorities, including the Scottish Government, to undertake "Island proofing" and for the Scottish Government to have to consult on and publish a National Islands Plan. It also proposes that all public bodies in Scotland should be covered by the provisions rather than the current draft Bill which lists the bodies to which the legislation will apply.
- 4.5 It is proposed that the Council is broadly supportive of the other provisions without going into a lot of detail as they will have little or no impact on the islands in the Highland Council Area.
- 4.6 The statutory guidance that will accompany the legislation will be very important in setting out precisely what is meant by a duty to 'have regard' to islands when introducing new policies and legislation or amending existing policies and legislation. The current wording of the Bill is broad enough to enable organisations to only pay minimal attention to the requirements. Consequently, the attached response also

stresses the importance of the Scottish Government undertaking meaningful engagement on the drafting of this guidance and suggests amending the wording so that public authorities are required to have 'Due Regard' in relation to island proofing, as this has a stronger meaning in law.

- 4.7 The draft Bill does not set out what constitutes 'having regard' to island impacts. However, Scottish Government officials have advised that it is likely that organisations will be expected to undertake an initial screening to determine whether there might be an impact and only undertake a full impact assessment if a negative differential impact appears likely - very much along the same lines as an equality impact assessment. The attached response requests that the guidance makes clear that screening and impact assessments need to be evidenced as taking place at the start of the policy development process, rather than as a tick box exercise at the end.

5. **Next Steps**

The deadline for written responses is 25 September 2017. In addition, the Director of Development and Infrastructure has been asked to give oral evidence in Edinburgh on 20 September, alongside the other local authorities with islands.

6. **Implications**

- 6.1 Resource – there are potential resource implications for the Council arising from the duty because, although the Bill does not impose a requirement to ensure there are no differential impacts arising from changes in our policies, having regard *may* mean that mitigating actions are required in some cases which could potentially come at a cost.
- 6.2 Legal – there are no legal implications apart from those raised in main body of the report.
- 6.3 Community (Equality, Poverty and Rural) – there are potentially very positive community implications arising from the Bill.
- 6.4 Climate Change / Carbon Clever – there are no direct implications.
- 6.5 Risk – the main risk is financial as set out in the Resource section, above.
- 6.6 Gaelic – there are potentially positive implications arising from the Bill as Gaelic speaking island communities will potentially be more influential than has previously been the case.

Designation: Chief Executive

Date: 28 August 2017

Author: Kate Lackie, Business Manager

Background Papers:

Initial draft Highland Council evidence

The Highland Council welcomes the opportunity to submit written evidence on the Islands (Scotland) Bill.

The Highland Council has previously responded to the consultation for provisions for a future Islands Bill in 2015. In this we welcomed the principles behind the proposals and the special recognition that they gave to the unique challenges and opportunities facing our island communities. However, it was also stressed that many of these issues apply to remote and rural communities and so there was a need for the government to take steps to ensure there was a more general rural proofing of policies and legislation. The point was also made that island communities should not be awarded powers that could lead to a negative differential impact for other areas, particularly mainland coastal communities. This is still a critical point for the Highland Council and in circumstances where this might apply, the approach should not be to remove the provision but rather to broaden it to encompass non-island communities as well.

The Highland Council's previous response sought opportunities for island communities to have dispensation from certain policy directives, where these are not suitable in an island context. Education was one such example, where there are challenges in recruiting and retaining staff in schools, especially head teachers, and current government initiatives and requirements are potentially counter-productive in an island context. Whilst not reflected in the Bill, it is hoped that the National Islands Plan will include recognition of such factors.

Revenues (community benefit) derived from offshore energy development can contribute significantly to local economic development. Currently there is no requirement for off-shore developers to provide any financial recompense to communities and the Highland Council continues to believe there is merit in having provision for this in the legislation.

The Islands (Scotland) Bill is silent on the above points and, whilst the Highland Council welcomes the Bill as a positive first step in recognising island issues, it is hoped that this is just the start of a process that will lead ultimately to the delivery of policies, legislation and services that are responsive to all island, coastal and rural communities.

The Highland Council reserves final judgement on the legislation as drafted because of the absence of draft Statutory Guidance to accompany the Bill. It is this that will set out how the legislation is to be applied and how public authorities, including the Scottish Government, are to execute the new duties to have regard to island communities and undertake impact assessments. This also means the council does not have certainty around how the legislation will apply to its own activities. As a consequence, it will be essential for local authorities to be consulted and be able to influence the drafting of the guidance.

The Highland Council welcomes the opportunity to be a member of the Islands Ministerial Working Group and looks forward to continued collaboration with local authority colleagues and the Scottish Government to continue to develop this important workstream.

- **The Bill creates a duty to publish a national islands plan and lay it before the Scottish Parliament. What are your views on this provision?**

- The Highland Council welcomes the proposition in the Bill to place a duty on Scottish Ministers to prepare and lay before the Scottish Parliament a national islands plan.
- The Highland Council believes it will be essential for the Scottish Government to engage closely with the relevant local authorities in the development of the Plan. Whilst section 4, preparation and scrutiny of the plan, places an obligation upon Scottish Ministers to consult persons representing the interests of island communities, the Highland Council considers this should explicitly include all local authorities with island communities.
- In the previous consultation response the Highland Council highlighted a number of areas for additional powers and protection which have not been reflected in the Bill. The council believes that the national islands plan could include: a new community benefit scheme for offshore renewables; protection and enhancement of digital and transport connectivity; and dispensation from current government policies and initiatives that unfairly impact on island communities.
- The Highland Council welcomes the requirement that the distinctive characteristics of island communities must be taken into account when developing the plan; however, there should not be a limited description of such characteristics given the uniqueness of many island communities across Scotland and also the need for the legislation to be applicable in a changing environment.

- **The Bill will require Scottish Ministers and certain Scottish public authorities, to prepare island impact assessments. Do you agree with this provision? How do you think it should work in practice?**

- Yes, the Highland Council has always been very supportive of the principle of 'island proofing' and welcomes the introduction of duties being placed upon relevant authorities to have regard to island communities when exercising their functions and to prepare impact assessments in relation to island communities in certain circumstances.
- We would support a strengthening of the provision so that public authorities must have 'due regard' and not just 'regard' to island communities.
- The Statutory Guidance will be critical in determining how public authorities discharge their duties and undertake island impact assessments. The Highland Council's preferred approach would be to mirror the method used in equality impact assessments, where screening is undertaken first to determine whether a full scale impact assessment is required. However, the guidance should make clear that screening must happen at the beginning of a policy or legislative development, not at the end, to ensure island issues are fully taken into consideration.
- In the Highland Council's response to the proposed Bill in 2015, it was argued that instead of listing the authorities that would be covered by the legislation, the legislation should automatically apply to all public bodies. Only excluded bodies should be listed as this protects against the schedule having to be updated every time a new public body is created or the name of an existing public body changes in some way. It also sends out a stronger message in terms of the intention of the legislation. This is still the Council's position.

- In terms of section 12 preparation of island communities impact assessment by Ministers, The Highland Council welcomes the fact that this will apply to proposed legislation which is both primary and secondary in nature which it is anticipated will have a significantly different effect on an island community from its effect on other communities in Scotland.
- **The Bill proposes to protect the Scottish Parliamentary constituency boundary of Na h-Eileanan an Iar (the Western Isles) from change. Do you agree with this?**
 - The Highland Council supports this proposal. We would also like similar protection to be afforded to large rural areas with low population levels.
- **The Bill proposes to make an exception to the rules for local government electoral wards to allow areas with inhabited islands to return 1 or 2 members (instead of the usual 3 or 4). What are your views on this proposal?**
 - The Highland Council supports this proposal but considers there should be a population limit below which it should not apply.
- **The Bill will provide a regulation-making power for the Scottish Ministers to create a marine licensing scheme for coastal waters. Do you agree with this power? Do you have any comments on how it should be used?**
 - The Highland Council supports this proposal.
 - As stated elsewhere in the Highland Council's response, the Statutory Guidance will be very important and, in its absence, it is unclear precisely how these provisions will be applied and what impact there may be on other coastal areas that are not islands. So, whilst the Council cautiously welcomes this proposal in principle, we are keen to see what it will mean in practice and to be involved in the development of these new arrangements.
 - The Highland Council considers it to be essential that the legislation does not lead to mainland coastal communities being unfairly treated by comparison with their island neighbours. New powers and authority in terms of control over marine activities should extend equally.
- **Does the Bill achieve its aims and are you in favour overall? Is there anything else that you feel should be included or excluded from the Bill?**
 - The Highland Council is generally in favour overall of the scope of the Bill and its intentions.
- **Do you have any comments on the bill in relation to human rights or equalities?**
 - As outlined elsewhere, The Highland Council considers it to be essential that the legislation does not lead to mainland coastal communities being unfairly treated by comparison with their island neighbours.