

Islands (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 15-EN), a Financial Memorandum (SP Bill 15-FM), a Policy
Memorandum (SP Bill 15-PM) and statements on legislative competence (SP Bill 15-LC).**

Islands (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for a national islands plan; to impose duties in relation to island communities on certain public authorities; to make provision about the electoral representation of island communities; and to establish a licensing scheme in respect of marine development adjacent to islands.

5

PART 1

KEY DEFINITIONS

1 Meaning of “island” and of “inhabited island”

- (1) In this Act, “island” means a naturally formed area of land which is—
- (a) surrounded on all sides by the sea (ignoring artificial structures such as bridges),
10 and
 - (b) above water at high tide.
- (2) In this Act, “inhabited island” means an island permanently inhabited by at least one individual.

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2 Meaning of “island community”

In this Act—

“island community” means a community which—

- (a) consists of two or more individuals, all of whom permanently inhabit an island (whether or not the same island), and
- (b) is based on common interest, identity or geography.

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PART 2

NATIONAL ISLANDS PLAN

*Duty to prepare national islands plan***3 National islands plan**

- 5 (1) The Scottish Ministers must prepare a national islands plan.
- (2) In this Part, a “national islands plan” is a plan setting out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities that result from, or are contributed to by, the carrying out of functions of a public nature.

4 Preparation and scrutiny of plan

- 10 (1) In preparing the national islands plan, the Scottish Ministers must—
- (a) consult—
- 15 (i) such persons as they consider represent the interests of island communities, and
- (ii) such persons as they consider likely to be affected by the proposals contained in the plan, and
- (b) have regard to the distinctive geographical and cultural characteristics of each of the areas inhabited by island communities.
- (2) The Scottish Ministers must lay the proposed national islands plan before the Scottish Parliament—
- 20 (a) in the case of the first plan, before the end of the period of one year beginning with the day on which this section comes into force,
- (b) in any other case, following a review under section 6(1).
- (3) The Scottish Ministers must complete their preparation of the national islands plan after the expiry of the period of 40 days beginning with the day on which the plan is laid before the Scottish Parliament (taking no account of any time during which the Parliament is dissolved or in recess for more than 4 days).
- 25 (4) As soon as reasonably practicable after the end of the period mentioned in subsection (3), the Scottish Ministers must publish the plan.

*Reporting on and review of plan***5 Report on plan**

- 30 (1) The Scottish Ministers must prepare a report for each reporting year, containing information—
- 35 (a) about the extent to which the outcomes identified in the national islands plan have improved in the reporting year,
- (b) about the steps which the Scottish Ministers have taken to comply with the duties in relation to island communities imposed by—
- (i) section 7 (including any island communities impact assessment prepared under section 8), and

(ii) section 12, and

(c) about any other matters which the Scottish Ministers consider appropriate.

(2) In this section, “reporting year” means the period of one year beginning—

(a) in the case of the first report following each publication of a national islands plan under section 4(4), with the day on which the national islands plan is published,

(b) in any other case, with the day of the expiry of the last period of one year.

(3) As soon as reasonably practicable after preparing a report under subsection (1), the Scottish Ministers must—

(a) lay the report before the Scottish Parliament, and

(b) publish the report.

6 Review of plan

(1) The Scottish Ministers—

(a) must review the national islands plan before the end of the period of 5 years beginning with the day on which the plan was last published, and

(b) may from time to time review the plan.

(2) Following a review under subsection (1), the Scottish Ministers may revise the plan as they consider appropriate.

(3) Subsections (1), (3) and (4) of section 4 apply to a review of the plan under subsection (1) as they apply to the preparation of the plan under that section.

PART 3

DUTIES IN RELATION TO ISLAND COMMUNITIES

Duty of certain authorities in respect of policies and services

7 Duty to have regard to island communities

(1) A relevant authority must have regard to island communities in carrying out its functions.

(2) In this Part, a “relevant authority” means a body, office-holder or other person listed in the schedule.

(3) The Scottish Ministers may by regulations amend the schedule by—

(a) adding an entry for any person, body or office-holder, or

(b) removing an entry.

8 Island communities impact assessment

(1) A relevant authority must prepare an island communities impact assessment in relation to a—

(a) policy,

(b) strategy, or

(c) 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.

- 5 (2) Subsection (1) applies to the development, delivery and redevelopment of the policy, strategy or service (as the case may be).
- (3) An island communities impact assessment prepared under subsection (1) must—
- 10 (a) describe the likely significantly different effect of the policy, strategy or service (as the case may be), and
- (b) assess the extent to which the authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it.

9 Compliance with section 7 duty

A relevant authority demonstrates compliance with the duty imposed by section 7—

- 15 (a) in the case where the authority must prepare an island communities impact assessment under section 8(1), by preparing that assessment, or
- (b) in any other case, by making such an assessment or taking such other steps as the authority considers appropriate.

Guidance and reporting

10 Guidance about section 7 duty

- 20 (1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the duty imposed by section 7.
- (2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—
- (a) such persons as they consider represent the interests of island communities, and
- (b) such persons as they consider likely to be affected by the guidance.

11 Reporting regarding section 7 duty

- 25 (1) A relevant authority to which the duty imposed by section 7 applies in a reporting period must publish information about the steps which the authority has taken to comply with that duty during that reporting period.
- 30 (2) A “reporting period” is any period determined by the authority of up to a maximum of one year.
- (3) The relevant authority may publish the information in such manner as the authority considers appropriate (for example in an annual or other report prepared by the authority).
- (4) Subsection (1) does not apply to the Scottish Ministers (see section 5).

Duty of the Scottish Ministers in respect of legislation

12 Preparation of island communities impact assessment by Ministers

- 5 (1) The Scottish Ministers must prepare an island communities impact assessment in relation to legislation which, in their 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 Scotland.
- (2) In subsection (1), “legislation” means—
- 10 (a) a Bill for an Act of the Scottish Parliament which the Scottish Ministers intend to introduce in the Parliament, and
- (b) subordinate legislation which is—
- (i) to be made by the Scottish Ministers and is subject to the negative procedure, or
- (ii) to be laid in draft before the Scottish Parliament and, subject to the affirmative procedure, to be made by the Scottish Ministers.
- 15 (3) An island communities impact assessment prepared under subsection (1) must—
- (a) describe the likely significantly different effect of the legislation, and
- (b) assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation.

20 **PART 4**

REPRESENTATION OF ISLAND COMMUNITIES

Elections to the Scottish Parliament

13 Constituency of Na h-Eileanan an Iar

- 25 (1) In schedule 1 of the Scotland Act 1998 (constituencies, regions and regional members)—
- (a) in paragraph 1(2), before paragraph (a) insert—
- “(za) the existing constituency of Na h-Eileanan an Iar,”
- (b) in paragraph 3(1), for “1(2)(a)” substitute “1(2)(za), (a)”, and
- (c) in paragraph 12, in Rule 2—
- 30 (i) in paragraph (3), for “71” substitute “70”, and
- (ii) in paragraph (7), after “areas of” insert “Comhairle nan Eilean Siar,”.
- (2) In the Scottish Parliament (Constituencies and Regions) Order 2014 (S.I. 2014/501)—
- (a) article 2 is to be read as if Na h-Eileanan an Iar were not included in the “deposited data” within the meaning of article 2(2), and
- 35 (b) in schedule 1—
- (i) in the introductory words before the table, after “than” insert “Na h-Eileanan an Iar,” and

- (ii) in the table, the entry for the constituency of Na h-Eileanan an Iar is revoked.
- (3) In article 42(10) of the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425), after “article” insert “the constituency of Na h-Eileanan an Iar,”.

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Local government elections

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—

10

“(2A) But, in relation to an electoral ward consisting wholly or mainly of one or more 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.”.

15 Review of wards in certain local government areas

15

- (1) As soon as practicable after the commencement of this section, the Local Government Boundary Commission for Scotland (“Boundary Commission”) must—

- (a) review the electoral arrangements for each local government area mentioned in subsection (2), for the purpose of considering future electoral arrangements for those areas, and
- (b) formulate proposals for those arrangements.

20

- (2) The local government areas are the areas of—

- (a) Argyll and Bute Council,
- (b) Comhairle nan Eilean Siar,
- (c) Highland Council,
- (d) North Ayrshire Council,
- (e) Orkney Islands Council,
- (f) Shetland Islands Council.

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- (3) Part 2 of the 1973 Act applies to a review under subsection (1) as it applies to a review under section 16 of that Act except that section 17 of that Act has effect as if it required the Boundary Commission to submit a report on the review before such date as the Scottish Ministers may direct.

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- (4) The review under subsection (1) is to be disregarded for the purposes of calculating the intervals between the Boundary Commission reviews of electoral arrangements under section 16(2) of the 1973 Act (duty to review electoral arrangements).
- (5) In this section, “1973 Act” means the Local Government (Scotland) Act 1973.

PART 5

DEVELOPMENT IN THE SCOTTISH ISLAND MARINE AREA

Key definitions

16 Meaning of “development activity”

- 5 (1) In this Part, “development activity” means—
- (a) construction, alteration or improvement works of any description (either in or over the sea, or on or under the seabed),
 - (b) any form of dredging (whether or not involving the removal of any material from the sea or seabed).
- 10 (2) But the following are not development activities—
- (a) any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and gas) in Part II of schedule 5 of the Scotland Act 1998 and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),
 - 15 (b) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part 1 of that schedule,
 - (c) any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995,
 - 20 (d) any activity involving the placing, assembly or operation of any equipment within the Scottish island marine area for the purpose of fish farming (within the meaning given by section 26(6) of the Town and Country Planning (Scotland) Act 1997).

17 Meaning of “Scottish island marine area”

- 25 In this Part, “Scottish island marine area” means such part of the Scottish marine area (within the meaning of Part 1 of the Marine (Scotland) Act 2010) which is—
- (a) adjacent to an island, and
 - (b) up to 12 nautical miles from that island, measured from the low water mark of the ordinary spring tide.

Licensing of development activities

18 Scottish island marine area licence

- 30 (1) The Scottish Ministers may by regulations establish a scheme by virtue of which a person must not, except in accordance with a licence granted by a local authority, carry on a development activity within such part of the Scottish island marine area as is designated in the regulations as a part in which such a licence is required to carry on a development activity (in this Part an “island licensing area”).
- 35 (2) Regulations under subsection (1) may designate an area as an island licensing area only if—
- (a) a local authority has applied to the Scottish Ministers for such a designation to be made, and
 - 40 (b) the Scottish Ministers are satisfied that the area includes an inhabited island.

- (3) Regulations under subsection (1) may make provision about (in particular)—
- (a) the types of development activity covered by, and exempted from, the scheme,
 - (b) the area and boundaries of the Scottish island marine area—
 - (i) which are covered by, or exempted from, the scheme,
 - 5 (ii) which are allocated to a particular local authority for the purposes of the scheme,
 - (iii) which are designated as an island licensing area,
 - (c) the procedure to be followed in relation to an application to a local authority for a licence, including about—
 - 10 (i) the steps to be taken before a person may apply for a licence (for example consultation and notification of affected persons),
 - (ii) the issue, renewal, variation, transfer, suspension and revocation of a licence,
 - (iii) an appeal of a decision relating to a licence,
 - 15 (iv) the fees chargeable by a local authority,
 - (v) the holding of an inquiry in connection with the determination of an application,
 - (d) the effect of an application and of a grant of a licence to carry on a development activity on—
 - 20 (i) an application for, or a grant of, a marine licence under Part 4 of the Marine (Scotland) Act 2010,
 - (ii) an application for, or a grant of, consent under section 36 of the Electricity Act 1989 (consent for construction etc. of generating stations) in relation to the activity or other works to be undertaken in connection with the activity,
 - 25 (e) the enforcement of the regulations, including about the issuing of the following kinds of notice in relation to works not carried out in accordance with a licence—
 - (i) a compliance notice, requiring a person to take such steps as are specified in the notice in relation to such works,
 - 30 (ii) a remediation notice, requiring a person to take such steps as are specified in the notice in relation to such works, or to compensate a local authority or other person for remedial steps taken, or to be taken, in relation to such works (or both),
 - (f) a power to carry out remedial works where a development activity has been carried on otherwise than in accordance with a licence,
 - 35 (g) offences and penalties in relation to a contravention of—
 - (i) a prohibition on a development activity within the Scottish island marine area,
 - (ii) a restriction contained in a licence,
 - (h) exceptions and defences to such offences,
 - 40 (i) the imposition of fixed monetary penalties in relation to a contravention that is criminalised by virtue of paragraph (g) and (h),

(j) the publication of information in a public register maintained by a local authority, including about—

(i) what information is to be published in the register (and in what manner and form),

(ii) the circumstances in which information must not be published (for example if its publication would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest),

(iii) the circumstances in which a local authority must provide copies of entries in the register to members of the public (whether on payment of a fee or otherwise).

(4) A fee provided for in regulations under subsection (1) in relation to an application to a local authority for a licence must represent the reasonable costs of an authority in deciding an application.

(5) The maximum penalties that may be provided for in regulations under subsection (1) for offences under the regulations are—

(a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 (or both),

(b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).

(6) Regulations under subsection (1) for the imposition of fixed monetary penalties may make provision similar to that which is enabled by sections 46 and 47 of the Marine (Scotland) Act 2010, but must provide that such penalties—

(a) may only be imposed where a local authority is satisfied beyond reasonable doubt that a person has committed an offence under the regulations,

(b) are to be imposed by notice, and

(c) cannot exceed £50,000 in relation to a particular contravention.

(7) Before laying a draft of the regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—

(a) such persons as they consider represent the interests of island communities, and

(b) such persons as they consider likely to be affected by the regulations.

19 Exception from requirement for licence

(1) A scheme established under section 18(1) does not apply to a person if—

(a) the person is carrying on a development activity in an island licensing area, and

(b) any of the conditions in subsection (2) applies.

(2) The conditions are—

(a) the development activity commenced before the area was designated as an island licensing area,

(b) the development activity is in a part of the island licensing area for which a person has a lease, or an agreement to lease, entered into before the area was designated as an island licensing area,

- (c) the person, before the area was designated as an island licensing area—
- (i) commenced the pre-application consultation as required under sections 22 to 24 of the Marine (Scotland) Act 2010 for the development activity,
 - (ii) made an application for, or was granted, a marine licence under Part 4 of that Act for the development activity, or
- (d) the person, before the area was designated as an island licensing area, applied for, or was granted, a works licence under the Orkney County Council Act 1974 or the Zetland County Council Act 1974 for the development activity.

20 Crown application

- (1) Nothing in this Part makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

PART 6

FINAL PROVISIONS

Regulations

21 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) different provision for different purposes.
- (2) Regulations—
- (a) under section 7(3),
 - (b) under section 18(1),
- are subject to the affirmative procedure.
- (3) This section does not apply to regulations under section 22(1) or 23(2).

22 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.

- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

5

Commencement and short title

23 Commencement

- (1) This section and sections 1, 2, 22 and 24 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

10

- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

24 Short title

The short title of this Act is the Islands (Scotland) Act 2018.

SCHEDULE

(introduced by section 7(2))

DUTIES IN RELATION TO ISLAND COMMUNITIES: RELEVANT AUTHORITIES

Scottish Administration

- 5 1 Scottish Ministers
 2 Keeper of the Records of Scotland
 3 Keeper of the Registers of Scotland
 4 Registrar General of Births, Deaths and Marriages for Scotland

Scottish public authorities with mixed functions or no reserved functions

- 10 5 Accounts Commission for Scotland
 6 Audit Scotland
 7 Bòrd na Gàidhlig
 8 Caledonian Maritime Assets Limited (company number SC001854)
 9 Children's Hearings Scotland
 15 10 Creative Scotland
 11 Crofting Commission
 12 Crown Estate Scotland (Interim Management)
 13 David MacBrayne Limited (company number SC015304)
 14 Highlands and Islands Airports Limited (company number SC097647)
 20 15 Highlands and Islands Enterprise
 16 Historic Environment Scotland
 17 Mental Welfare Commission for Scotland
 18 Mobility and Access Committee for Scotland
 19 Scottish Children's Reporter Administration
 25 20 Scottish Courts and Tribunals Service
 21 Scottish Enterprise
 22 Scottish Environment Protection Agency
 23 Scottish Fire and Rescue Service
 24 Scottish Further and Higher Education Funding Council
 30 25 Scottish Housing Regulator
 26 Scottish Land Commission
 27 Scottish Legal Aid Board
 28 Scottish Natural Heritage
 29 Scottish Police Authority
 35 30 Scottish Qualifications Authority

- 31 Scottish Social Services Council
- 32 Scottish Sports Council
- 33 Scottish Water
- 34 Skills Development Scotland Co. Ltd (company number SC202659)
- 5 35 Social Care and Social Work Improvement Scotland
- 36 VisitScotland

Health Boards (including Special Health Boards)

- 37 Common Services Agency for the Scottish Health Service
- 38 Healthcare Improvement Scotland
- 10 39 NHS 24
- 40 NHS Ayrshire and Arran
- 41 NHS Education for Scotland
- 42 NHS Health Scotland
- 43 NHS Highland
- 15 44 NHS National Waiting Times Centre
- 45 NHS Orkney
- 46 NHS Shetland
- 47 NHS Western Isles
- 48 Scottish Ambulance Service
- 20 49 State Hospitals Board for Scotland

Integration Joint Boards

- 50 Argyll and Bute
- 51 Highland
- 52 North Ayrshire
- 25 53 Orkney Islands
- 54 Shetland Islands
- 55 Western Isles

Local Government

- 56 Argyll and Bute Council
- 30 57 Comhairle nan Eilean Siar
- 58 Highland Council
- 59 North Ayrshire Council
- 60 Orkney Council
- 61 Shetland Council

Regional Colleges

- 62 Ayrshire Regional College
- 63 University of the Highlands and Islands

Regional Transport Partnerships

- 5 64 Highlands and Islands Regional Transport Partnership
- 65 Shetland Regional Transport Partnership
- 66 Strathclyde Regional Transport Partnership

Islands (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for a national islands plan; to impose duties in relation to island communities on certain public authorities; to make provision about the electoral representation of island communities; and to establish a licensing scheme in respect of marine development adjacent to islands.

Introduced by: Fergus Ewing
Supported by: Humza Yousaf
On: 9 June 2017
Bill type: Government Bill

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