

## THE HIGHLAND COUNCIL

17 December, 2015

### Consultation on Provisions for a Future Islands Bill Report by the Chief Executive

Agenda Item	14
Report No	HC/58/15

#### Summary

**This report seeks members' approval for the attached draft response to the Scottish Government's consultation on Provisions for a Future Islands Bill.**

## 1. Background

1.1 The Consultation on Provisions for a Future Islands Bill was published at the end of September and the deadline for replies is 23 December 2015. The aim of the consultation is to seek the views of interested stakeholders on plans for more power and protection for Scotland's islands.

1.2 The Government's decision to introduce an Islands Bill is as a direct result of the Our Islands Our Future campaign (OIOF), launched by the three Islands Councils, Orkney, Shetland and Comhairle nan Eilean Siar. The Highland Council has maintained contact with the Scottish Government and the three island authorities throughout this process to ensure that Highland interests are not undermined by this campaign and have received assurances to this effect. There are clear parallels between the OIOF campaign goals and many of the objectives set out in the Council's Programme, Highland First.

1.3 At the last meeting of the Highland Council on 29 October 2015 members agreed to establish an informal members working group to consider the Council's draft response to the consultation, prior to submitting for formal approval at Council today. The Working Group has met twice in the intervening period and the attached draft response reflects the Group's discussions. All Groups were invited to participate and there was representation from Councillors representing both island and mainland wards. The first meeting of the Group also included a representative from the Scottish Government's Local Government Division, Darren Dickson.

## 2. The Consultation

2.1 The Scottish Government's consultation seeks views on 5 separate but connected issues:

1. Island-Proofing – whether a legal duty should be placed on Ministers and relevant public bodies to 'island-proof' their functions and decisions;

2. Empowering Island Communities – what additional powers and functions could be passed to island councils to benefit or better protect the island communities they serve;
3. National Islands Plan – whether a legal duty should be placed on all future Scottish Governments to prepare a ‘National Islands Plan’, setting out on-going commitments across all policy areas of Government to support, promote and empower our island communities;
4. Statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency boundary; and
5. Local Government Electoral Wards – whether the Local Government Boundary Commission in Scotland should have discretion to recommend wards with less than three councillors so that populated islands are not placed in an electoral ward that contains a significant proportion of mainland population.

1.4 In addition to making general comments around each of these themes, respondents are invited to answer a series of questions at the end of each section.

### **3. Consultation Response**

3.1 The draft consultation response is attached at Appendix 1. This begins with a general statement in support of the principles underpinning the Government’s proposals and welcoming the opportunity to have early input into the development of the Bill. It also uses this opportunity to make a statement about the parallel challenges facing both island *and* remote rural communities and the need for the Government to consider a consistent approach to rural proofing as well as island proofing.

3.2 The main part of the response relates to the fourteen questions associated with the 5 sections of the consultation. This returns the focus of the response to island issues because, although it is essential to put down a strong marker about the importance of rural proofing, it is also important not to stray too far from the main purpose of the consultation in order to present the Council as a key stakeholder on specifically island issues. There is a risk otherwise of being marginalised because the majority of our land mass is on the mainland.

3.3 The report concludes with the Council stressing its desire to be a key stakeholder, alongside our island authority neighbours, in the process of developing the proposals and the drafting of the Islands Bill itself. Our response is consequently presented as the start of a process in which we expect to have regular engagement and input.

### **4. Implications**

4.1 Resource There are potential financial implications arising for the Council, depending on what measures are included in the Bill. The Council’s response therefore seeks assurances from the Scottish Government that funding will be provided to cover any additional resources required to implement the provisions of the Act.

4.2 Legal, Equality and Climate Change: There are no legal, equality or climate change

implications arising from this report.

- 4.3 Rural: the rural implications of the Bill may be significant and will require further engagement with the Scottish Government as the proposals are developed.

**5. Recommendation**

- 5.1 Members are asked to approve the attached response to the Scottish Government's consultation on proposals for an Islands Bill.

Signature:

Signed: Steve Barron  
Designation: Chief Executive

Authors: Kate Lackie, Business Manager

Date: 8 December 2015

## **Provisions for a Future Islands Bill**

### **DRAFT response from the Highland Council December 2015**

#### **Introduction**

The Highland Council fully supports the principles that underpin the Government's decision to bring forward proposals for an Islands Bill. We welcome the Government's commitment to the principle of subsidiarity and local decision making and the recognition that more power and protection is required to help shape a more prosperous and fairer future for all of Scotland's 93 island communities.

The Scottish Government's prospectus "Empowering Scotland's Islands Communities" clearly set out the challenges facing our island communities:

"...fragile areas, characterised by factors such as declining population, scarcity of economic opportunities, proportionately fewer young people, geographical and transport challenges, and below average income levels."

These challenges are significant and many are insurmountable without the sustained attention of the Scottish Government and the protection that this legislation potentially affords.

All of the elements listed above also describe Highland's remote rural and coastal communities where the challenges are every bit as formidable. This piece of legislation is very welcome for what it promises for island communities and this will be the focus of the main body of the Highland Council's response to this consultation and to future engagement in the Bill as it develops. However, we also urge the Scottish Government to agree that this should be part of a wider suite of measures to ensure all of our communities' needs are recognised and advanced. Attention needs to broaden to acknowledge the challenges faced in many of our more remote mainland communities and the need for equality of treatment and access to resources. We consequently want to see the new powers introduced by this Bill to be extended to include the wider Highland Council area.

Article 174 of the Treaty on the functioning of the European Union (6655/1/08 REV1) was adopted to promote the territorial cohesion and the harmonious economic and social and development of the union. In particular, Article 174 aims at reducing disparities between the levels of development of the various regions concerned specifically: "rural areas...and regions which suffer from severe and permanent natural or demographic Handicaps...."

Further Article 175 requests that "Member States conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174" and to formulate and implement the Union's policies and actions so as to take account of the objectives set out in Article 174.

In light of this it is clear that a distinction should not be made between island and mainland communities where this could lead to disparities in the opportunities, support and powers afforded to island communities and not to others. Measures need to mitigate equally against the specificities that can act as a barrier to socio-economic development, not add to them.

### **Island-Proofing**

**(1) Is the concept of 'Island Proofing' something the Scottish Government should consider placing in legislation through the proposed Islands Bill?**

For all the reasons given above, the Highland Council agrees that the concept of island proofing should be enshrined in legislation. However we would like the provisions to extend to the Highlands as well as all of the islands.

**(2) If you answered 'Yes' to question 1, do you agree that Scottish Ministers should have the power to issue statutory guidance to other relevant public bodies related to island proofing which they would be required to adhere to in exercising their functions and duties.**

The Highland Council agrees with this proposal in principle but with the caveat that unconditional agreement cannot be given in the absence of more detailed information on what 'island proofing' actually entails. The Highland Council would be very happy to work with the Scottish Government in the development of this important policy.

**(3) If you answered 'Yes' to question 2, please state which public bodies, and what specific decisions this statutory guidance you think this should relate to?**

The Highland Council considers this question is framed from the wrong angle and should instead be asking whether any public bodies should be exempt. To which the answer would be no.

**(4) Are there any other areas that you feel the policy of Island-Proofing should cover?**

As stated in the introduction, the Highland Council feels very strongly that the focus on subsidiarity and enhanced powers and protection should be extended to all of our rural Highland communities in addition to island communities.

**(5) Do you agree that the current powers Island Councils, and Councils with Island responsibilities presently have are sufficient to deliver positive outcomes for their local island communities?**

The Highland Council does *not* agree that the current powers we have are sufficient to deliver positive outcomes for their local island communities.

**(6) If you answered 'No' to question 5, please outline what additional powers you feel they require to benefit or better protect the island communities they serve, and explain the reasons for your answer.**

There are a wide range of additional powers that could provide communities with greater benefits and protection. The main ones are set below but this is not an exhaustive list and should develop as discussions around the Bill progress:

- Crown Estate
- Coastal Fisheries
- Inshore Fisheries Management
- Marine Management
- Education
- Energy generation and transmission, including renewables, oil and gas
- Connectivity and Transportation

The Highland Council has consistently pushed for the devolution of the Crown Estate to local authority control following transfer to the Scottish Parliament.

In common with other coastal local authorities in Scotland, island authorities should receive additional powers to manage the Crown Estate around their shores and on land where appropriate. Powers should include the collection and management of revenues arising from the estate. Revenues should be used to support economic development within the local authority areas in a similar manner to those generated by oil revenues in Shetland where funds are used to enhance community facilities and the local economy.

Highland has one third of Scotland's total coastline and consequently measures relating to the ownership and management of Crown Estate assets must apply equally to the whole of the Highland Council area as well as our island communities. Not to do so would run counter to the principles of subsidiarity which underpin the Bill and also undermine the aims of Article 74 on territorial cohesion. We can see no possible justification for awarding powers over Crown Estate assets in the Minches to Comhairle nan Eilean Siar that are not enjoyed equally by their neighbours across the same stretch of water in Highland. This is true for all of Highland's other seaboard areas.

Revenues (community benefit) derived from offshore energy development can also contribute significantly to local economic development. The principles of equality of treatment for Highland and island coastal communities apply in the same way as for the Crown Estate.

Powers should also be awarded to local authorities to regulate and manage inshore fisheries. This can already be delivered via the Sea Fisheries Shellfish Act and is currently supporting the application for a Regulating Order in the Clyde fisheries area.

There are particular challenges in delivering education at pre-school, primary and secondary levels in island communities. The Highland Council believes the requirements imposed on all Scottish local authorities with regard to teacher numbers/ratios/length of the school day etc should be relaxed for island and remote communities and that local authorities should be given more powers to introduce

innovative solutions or at the very least, not have their current powers constrained by the imposition of penalties.

Connectivity is also of huge strategic importance to the Highlands and Islands – something that is already recognised by the Scottish Government. It is one of the key workstreams of the Convention of the Highlands and Islands and requires a partnership approach. Transport infrastructure is a particular challenge for island communities which can become very cut off, especially during periods of poor weather. Ferries provide essential lifeline services to island and coastal communities and the linkages between transportation between islands, and between islands and the mainland, have to be seen holistically. Legislating to protect these services provides important protection for these fragile areas. The availability and reliability of mobile and broadband connectivity is also an area where the Government has provided a helpful focus but much more needs to be done to ensure our rural communities are not unfairly disadvantaged because of their geography. Councils are currently constrained over what they can do to improve connectivity within their own boundaries and also between one council area and another. If it is not possible to confer powers through the Bill to assist Councils to help themselves, then it should form a major part of a National Islands Plan – see question 9.

The Highland Council would like to see greater linkages made between the proposed Bill, the Community Empowerment Act and future Land Reform legislation.

**(7) Do you feel there is a requirement to make any additions to the existing Zetland and Orkney County Council Acts of 1974? Yes/No. If 'Yes' please state what additions should be made and give the reasons for your answer.**

The Highland Council understands that some English legislation communities have the ability to take a stake in offshore renewables and we would like a similar option to be available for Scottish local authorities.

**(8) Should any of the powers currently set out in the Zetland and Orkney County Council Acts of 1974 be extended to the Western Isles and other relevant Councils? Yes/No. If 'Yes' please explain which powers and give the reasons for your answer.**

The Highland Council would fully support the extension of the powers conferred by the Zetland and Orkney County Council Acts of 1974 to other parts of Scotland. Whilst these Acts originated at the start of the oil era, the advent of renewable energy technologies means that it is as relevant today, if not more so, to afford development control over the sea around our coast lines. This is also just as important for our coastal communities as it is for our island communities - it would be difficult to argue why powers should be conferred to communities on one side of the Minches because they live on an island, but not those who live on the other side,

simply because they don't. The Highland Council's seaboard areas include the Minches, the Pentland Firth and the Sound of Mull, all of which are shared with island authorities and the east coast of Highland includes the Moray Firth. We would want the Zetland and Orkney Council Acts of 1974 to be extended to all of these areas.

In addition, the Highland Council would support the extension of financial powers to borrow, invest and participate in business; and as is the case of Shetland, powers of compulsory purchase.

**(9) Do you think the Scottish Government should introduce a 'National Islands Plan'? Yes/ No. Please explain the reasons for your answer.**

The Highland Council is cautiously supportive of the proposal to introduce a National Islands Plan.

We believe it is important that the work moves on from the Ministerial Working Group and continues to develop alongside and past the legislation. We see the National Plan as a way to ensure that the Scottish Government maintains responsibility and momentum in this important area.

However, the Highland Council would caution against the imposition of national priorities onto local situations and would not support any plan that reduced subsidiarity or constrained the current powers and responsibilities of local government. Furthermore, there should be no additional financial burden imposed on Councils as a consequence of the National Plan unless it is fully funded by the Scottish Government.

The Highland Council would like to be closely involved in the drafting of a National Islands Plan and will work collaboratively with the Scottish Government and our local authority neighbours in doing so.

**(10) Are there any specific areas you feel the plan should cover and report on?**

In smaller island communities like Rum and Eigg, population numbers are of critical importance to the sustainability of the communities. It is the strong belief of our elected members who represent these groups that a National Islands Plan could be of great significance in assisting with community resilience.

In addition, the points made at question 6 with regard to connectivity could also be developed as part of a National Islands Plan. This could be particularly helpful because of the need to involve public and private sector partners.



**(11) If such a plan was introduced, what in your view would be an appropriate life span for the plan – e.g. 3 years/5 years/other?**

This depends very much on what was in the Plan. There should be an option to introduce a mid-way review if a 5 year plan or longer was to be agreed.

**(12) Do you agree that statutory protection should be given to the Na h-Eileanan Scottish parliamentary constituency? Yes/No. Please explain the reasons for your answer.**

The Highland Council supports this proposal. We would also like similar protection to be afforded to large rural areas with low population levels.

**(13) Should the Scottish Government consider amending the Local Governance (Scotland) Act 2004 to allow the LGBCS the power to make an exception to the usual 3 or 4 member ward rule for use with respect to populated islands? Yes/No. Please explain the reasons for your answer.**

The Highland Council supports this proposal but considers there should be a population limit below which it should not be supported.

**(14) Please provide details of any additional issues, not addressed in your other responses, that you think should be considered in relation to the introduction of a future Islands Bill and its potential provisions.**

The Highland Council warmly welcomes the Government's proposals to introduce this Bill. It is right that the legislation should relate to all of Scotland's island communities as it is important that we do not start to create a league table of islands in terms of their importance or relative needs.

Likewise, we believe it is essential that the provisions of the Bill apply to the whole of the Highland Council area and not just our islands. The Highland Council seaboard areas include the Minches, the Pentland Firth, the Sound of Mull, and the Moray Firth. It would be impossible to justify why that communities in Skye should have more rights and powers than their neighbours across the water in Ardnamurchan, or that communities in the Orkney Islands have more claim over the Pentland Firth than those in Caithness. The legislation must be guided by the principles of equality.

We would like the Scottish Government to agree that the Highland Council will be involved in the development of this legislation and in future policy development in this crucial area. Authorities with island communities as well as mainland communities should not be side-lined in this process as we have particular insights into the challenges and opportunities that can only help to strengthen the process. We are particularly concerned about this because we were not invited to participate in the Crown Estate Stakeholder group, despite requests from ourselves and from members of that Group that Highland should be included. Given our significant interests in this area we believe that this needs to be rectified immediately.

The Scottish Government is asked to commit to offering the Highland Council a seat at the table on any stakeholder or consultation group that is established to develop the Bill or any of the elements being progressed by the Bill or National Islands Plan.

In conclusion, the Highland Council believes the Scottish Government should be congratulated for its commitment to Scotlands' islands and for bringing forward this early opportunity to engage in the development of an Islands Bill. We are also grateful for the positive engagement we have had with Scottish Government officials to assist us with our consideration of the proposals. This collaborative approach is very much to be welcomed and we look forward to this continuing into the future.

We believe that it may be helpful to progress this agenda by using the Convention of the Highlands and Islands. This will enable a partnership approach to be taken to the development of proposals and allow the insights of a wide range of public bodies to inform the Bill and National Plan. COHI already includes senior representatives of all community planning partners and has the commitment of the First Minister and her Cabinet. It works positively as a group and the communication channels are well established. It is next due to meet in March 2016 and then again in October 2016 which provides time for officials and COHI members to be working on developing specific work streams related to the draft legislation. Once the legislation is in place, COHI could provide a very useful locus for developing and then overseeing the National Plan.