

Agenda Item	13
Report No	HC/5/18

HIGHLAND COUNCIL

Committee: The Highland Council

Date: 8 March 2018

Report Title: Islands (Scotland) Bill 2018 – update report

Report By: The Chief Executive

1. Purpose/Executive Summary

- 1.1 The Second Reading of the Islands (Scotland) Bill 2018 is due around mid-March. It is at this point that amendments to the Bill will be put forward, including recommendations from the Rural Economy and Connectivity Committee's Stage 1 Report. As only Committee members are able to vote on these amendments at this stage, it is likely that all of the report's recommendations will be adopted.
- 1.2 Many of the Committee's proposals are to be welcomed. However, there is one proposal - to make the creation of local authority level island plans a statutory requirement - which will have resource implications for the Council both in terms of officer time and also increased costs.

2. Recommendations

- 2.1 Members are asked to
- i. Note the progress of the Bill;
 - ii. Welcome the numerous positive changes being proposed in the Stage 1 report on the Bill; and
 - iii. Agree to lobby the Rural Economy and Connectivity Committee to seek an amendment to the Bill's Financial Memorandum to ensure the full costs to local government arising from the new legislation will be provided for by the Scottish Government.

3. Background and main provisions of the Bill

- 3.1 The draft Islands Bill was introduced by the Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing MSP, on 9 June 2017. Its main provisions are:
- A requirement to 'island proof' future legislation and policies
 - The creation of a National Islands Plan
 - Statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency boundary
 - Greater flexibility around Councillor representation within island communities
 - Extended powers to island councils in relation to marine licencing
- 3.2 The Bill requires public authorities to undertake an impact assessment when developing, redeveloping and delivering a policy, a strategy or a service, if it is anticipated to have a significantly different effect on an island community compared with other non-island communities (Section 7 Duty). An island community's impact assessment must contain a description of the differential effect which is anticipated and the authority's assessment of the extent to which development or delivery can be carried out in such a way as to improve or (in the case of potentially adverse effect) mitigate the outcomes for island communities resulting from the policy, strategy or service in question.
- 3.3 Whilst this is helpful to ensure the impact of Scotland-wide policies and legislation is understood in relation to island communities, it will also require the Council to screen its own policy developments and service delivery decisions in terms of island impacts. Authorities must publish information about how they have complied with the Section 7 duty in their chosen reporting period of up to a year. It is for the authority to determine how to publish this information but the Explanatory Notes on the Bill state: *"the intention is that island communities impact assessments will become a normal procedural step in public authorities' decision-making processes, in the manner of the equality impact assessment."*
- 3.4 The Bill also establishes a new licensing regime for Scottish Island Marine Areas, giving legislative responsibility to Island local authorities. A local authority will have to apply for the licensing power and then can licence development activities offshore for 12 nautical miles. If the licensing regime is not adhered to, local authorities can issue compliance and remediation notices. It isn't specifically stated what constitutes development in this context but the policy memorandum mentions transport, fishing and energy. The Council has still to consider whether to apply for this new power.

4. Parliamentary Progress

- 4.1 Rural Economy and Connectivity Committee published its Stage 1 report on 22 January, and the Bill completed Stage 1 in Parliament on 8 February. Stage 2 is scheduled for mid-March. A specific date is yet to be announced.
- 4.2 The membership of the Committee is as follows: Edward Mountain MSP (Convener); Gail Ross MSP (Deputy Convener); Peter Chapman MSP; John Finnie MSP; Jamie Greene MSP; Richard Lyle MSP; Fulton MacGregor MSP; John Mason MSP; Mike Rumbles MSP; Colin Smyth MSP; Stewart Stevenson MSP.
- 4.3 The Committee's Stage 1 report makes over 60 recommendations some of which propose specific amendments to the Bill whilst others make more general recommendations about its scope and purpose. Many of these proposals are helpful, and the following are particularly to be welcomed:

- Support for further devolution of (undefined) powers to island communities;
- Inclusion of the six local authorities with island interests as *statutory* consultees to the National Islands Plan;
- Calling on the Scottish Government to consider what measures could be taken to ensure that significant contracts or procurement activity, undertaken using public money, are subject to an islands impact assessment;
- Recognition that the issues which affect islands can also impact on remote and rural mainland areas resulting in the Scottish Government agreeing to reflect on whether a similar approach to 'island-proofing' may be considered for remote rural areas;
- Inviting the Scottish Government and the Local Government Boundary Commission to consider whether further protection should be given to prevent constituencies in large rural areas from expanding any further;
- Proposing the Bill should make provision to allow a retrospective impact assessment to be carried out, if it can be demonstrated that a specific piece of current legislation or policy has a significantly detrimental impact on island communities.

4.4 The Bill as currently drafted requires the only Scottish Government to develop a National Islands Plan. However, the Committee has recommended that the Bill be amended to “make the creation of local authority level island plans a statutory requirement.” The Committee also suggests “local authorities and other relevant bodies consider designating an official to be responsible for the implementation of the local authority level plan.”

4.5 This proposal would require a far higher level of resource to be provided by local authorities in order to fully implement the new legislation than was originally envisaged in the Bill. There would need to be a significant amount of officer time dedicated to the extensive local consultation envisaged in the preparation of Island Plans, the drafting of the plan itself, and then the review and reporting requirements. There would also almost certainly be costs involved the implementation of the local plans themselves, once approved. However, the resource implications of this recommendation are not reflected in the Committee’s report conclusions and there is no corresponding recommendation requiring an amendment of the Bill’s Financial Memorandum to reflect this significant new local authority responsibility.

5. Next Steps

5.1 Amendments to the Draft Bill can be put forward at Stage 2. The Scottish Government will bring forward amendments from the Committee’s report that it supports, though amendments can in fact be put forward by any MSP at this point which means that Committee members can still present their own amendments if/where the Scottish Government has declined to accept them. Crucially, only Committee members can vote and so they have the greatest influence on the eventual scope and impact of the legislation.

5.2 Out of over 60 separate recommendations made in the Stage 1 report, the Committee Chair, Edward Mountain has specifically highlighted the recommendation for local authority plans as one of the Committee’s key recommendations. Attempts to have this amendment removed or voted down at Stage 2 are therefore unlikely to be successful. However, there is scope to raise the matter of increased costs to local authorities arising from the change and it looks likely that this is also going to be proposed by COSLA in it’s response to the Stage 1 report. It is therefore proposed that the Council

lobbies the the Rural Economy and Connectivity Committee to seek an amendment to the Bill's Financial Memorandum to fully reflect the costs arising from the new legislation. This should specifically incorporate any new obligations placed on local government arising from amendments accepted at Stage 2 relating to the development and implementation of Local Island Plans so that each local authority is resourced to deliver its own plan, which would link to existing community and local action plans.

6. Implications

- 6.1 Resource – there will be resource implications arising from the adoption of the Committee's proposed amendments to the Islands (Scotland) Bill as outlined above.
- 6.2 Legal – the legislation will result in the Council having a range of new legal obligations as set out in the report.
- 6.3 Community (Equality, Poverty and Rural) – the legislation is designed to have a positive impact on island communities. The acknowledgement by the Rural Economy and Connectivity Committee that the issues which affect islands can also impact on remote and rural mainland areas means that there is also potential for the Scottish Government take a similar approach to 'island-proofing' for remote rural areas.
- 6.4 Climate Change / Carbon Clever – there are no implications.
- 6.5 Risk – there is a risk around increased costs and it is hoped this can be mitigated by seeking an amendment to the Bill's Financial Memorandum.
- 6.6 Gaelic – The Rural Economy and Connectivity Committee expects that the Scottish Government will consider how the National Islands Plan can build on the support available to Gaelic speaking communities. It also recommends that the Scottish Government include consideration of the Gaelic language in its guidance on 'island-proofing'.

Designation: Steve Barron

Date: 22 February 2018

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A full copy of The Rural Economy and Connectivity Committee's Stage 1 Report can be downloaded here:

<https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2018/1/22/Stage-1-Report-on-the-Islands--Scotland--Bill-1/RECS052018R2.pdf>