

# POLICY BRIEF

No. 8, October 2018

## Islands (Scotland) Bill 2018: A Brief Overview

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# Islands (Scotland) Bill 2018: A Brief Overview

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This briefing paper gives an outline of the Islands (Scotland) Bill, which received Royal Assent on the 6<sup>th</sup> July 2018.

According to the Scottish Government, the Bill:

introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the public sector to meet the needs of island communities both now and in the future.<sup>1</sup>

## What are the Islands (Scotland) Bill main measures?

The Bill is a consequence of the 'Our Islands, Our Future' campaign launched in 2013 by Scotland's three Islands Councils – Shetland, Orkney and Comhairle nan Eilean Siar - which sought to ensure that the needs of island areas were taken into account, and the particular nature of Scotland's three main island areas recognised.<sup>2</sup> Consequently, the Bill seeks to put in place a framework of measures and policy changes that aim to improve on current policy by accurately reflecting the unique geographical and socio-economic challenges faced by Scotland's island

<sup>1</sup> Scottish Government. (2017, June 9). Policy Memorandum to the Islands (Scotland) Bill.

communities. The Bill aims to do so by enacting five key provisions:

- The creation of a National Islands Plan;
- A requirement to 'island proof' future legislation and policies;
- 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.



## A Brief Overview

The Bill contains 24 sections, arranged into six Parts, as follows:

**Part 1 – Key definitions:** This Part sets out the definition of an island, an inhabited island, and

<sup>2</sup> Our Islands, Our Future Campaign, Joint Position Statement; [http://www.orkney.gov.uk/Files/Council/Consultations/Our-Islands-Our-Future/Joint\\_Position\\_Statement.pdf](http://www.orkney.gov.uk/Files/Council/Consultations/Our-Islands-Our-Future/Joint_Position_Statement.pdf)

an island community. An island includes all naturally formed areas enclosed by the sea - ignoring the addition of man-made structures such as bridges, which means that the Isle of Skye is included. Tidal islands, e.g. Oronsay (off Colonsay), are also included. An inhabited island is defined as being permanently inhabited by at least one individual, whilst island community is interpreted broadly to include communities resident on a single island; communities which span a group of islands; and communities of common interest. Within these parameters, even two people can constitute an island community.

**Part 2 – National Islands Plan:** This places a duty on Scottish Ministers to prepare, lay before the Scottish Parliament and publish a 'National Islands Plan', which will set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. The first draft of the Plan must come before Scottish Parliament within 12 months of the Act coming into force. The plan will be reviewed annually and there is a requirement for Ministers to detail steps that they will take where outcomes identified in the Plan have not improved over the reporting period.

**Part 3 – Duties in relation to island communities (island proofing):** This provision requires relevant authorities, including the majority of public bodies, to have regard to island communities in carrying out their functions. An Islands Communities Impact Assessment (ICIA) must be prepared in relation to a policy, strategy or service considered to have a significantly different impact on island communities. A similar duty is imposed on Scottish Ministers in relation to legislation.

**Part 4 – Representation of island communities:** This provision is in two parts. Firstly, it provides for the protection of the Scottish parliamentary constituency boundary of Na h-Eileanan Iar from variation (thus placing it on the same basis as Orkney and Shetland). Secondly, it allows an exception to be made, in respect of areas with inhabited islands, to the usual three or four member ward rule for local government electoral wards and allows areas with inhabited islands to return one or two members instead of three or four. This is an effort to increase flexibility and subsequently reduce the

likelihood of island communities being part of a ward which also includes part of the mainland, and therefore being represented by a councillor who is not resident on an island.

**Part 5 – Development in the Scottish island marine area:** This provision allows Councils to make application to Scottish Ministers for a scheme to license development adjacent to or within 12 nautical miles of an island. This reflects the powers currently available in Orkney and Shetland through private Acts of Parliament. Under the new regulations a person will be unable to legally carry out a *development activity* in the defined Scottish Island Marine Area without obtaining a license from the relevant Local Council. If the license is granted the person will have to carry out the activity in compliance with the terms set by the respective Council. If the licensing regime is not adhered to, local authorities can issue compliance and remediation notices.

In relation to Part 5 of the Bill, *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).

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);
- (b) any activity relating to a matter which is a reserved matter by virtue of paragraph (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;
- (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).

## Conclusion

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The Islands (Scotland) Bill provides a new policy framework which aims to improve day-to-day outcomes for island communities in Scotland, and reflects some of the aspirations put forward by the Our Islands Our future campaign and the subsequent Scottish Government commitment to the islands.

However, the success of the Bill in terms of practical application resulting in general improvements to challenges currently faced by island communities has yet to be seen – the coming year and subsequent publication of the first National Islands Plan will stand as a key benchmark of success for Scottish Government and the Bill itself.

## Key resources:

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Islands (Scotland) Bill:

[http://www.parliament.scot/Islands%20\(Scotland\)%20Bill/SPBill15BS052018.pdf](http://www.parliament.scot/Islands%20(Scotland)%20Bill/SPBill15BS052018.pdf)

SPICe Briefing:

<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/9/4/Islands--Scotland--Bill-1#Executive-Summary>

Our Islands, Our Future Campaign:

<https://www.cne-siar.gov.uk/your-council/our-islands-our-future/>

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M Geelhoed, Response to the Public Consultation 'Good Food Nation Proposals for Legislation', SCELG Dialogue 10/2019

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F Sindico and K McKenzie, Human Rights Thresholds in the Context of Climate Change: A Litigation Perspective in the Wake of the IPCC Special Report on 1.5°C or the Week in which Everything Changed..., SCELG Dialogue 7/2018

F Sindico and S Switzer, The Transformation of Environmental Law and Governance: Risk, Innovation and Resilience, SCELG Dialogue 6/2018

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