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Islands (Scotland) Bill

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The Islands (Scotland) Bill was introduced to the Scottish Parliament on 9 June 2017. This briefing provides an overview of the background to the introduction of the Bill, a brief summary of the Bill, and links to further reading.



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Contents

Executive Summary	3
Background	5
Scotland's islands	5
Scotland's Census 2011	6
Demographics	6
Health	7
Economic Activity	7
The path to legislation	8
Our Islands, Our Future	8
Lerwick Declaration	9
Empowering Scotland's Island Communities	9
UK Government Islands Framework	10
Representing island communities - wider context	11
European Small Islands Federation	12
The Smart Islands Initiative	12
Changes impacting legislation	12
Scottish independence	12
EU membership	13
Consultation and Bill Introduction	14
Bill Contents	15
Part 2 - National Islands Plan	15
Part 3 - Duties in relation to Island Communities	15
Part 4 - Representation of Island Communities	16
Constituency of Na h-Eilneanan an Iar	16
Local Government elections	16
Part 5 - Development in the Scottish Island Marine Area	17
Financial Memorandum	17
Related Briefings	0
Bibliography	19

Executive Summary

In Spring 2013, following the announcement that there would be a Scottish Independence Referendum, Scotland's three island authorities - Orkney, Shetland and Comhairle nan Eilean Siar - formed a joint constitutional working group. This culminated in the launch of the Our Islands Our Future campaign in June 2013, and subsequent commitments from both the Scottish and UK Governments to better support and empower Scotland's island communities.

The Islands (Scotland) Bill was introduced to the Scottish Parliament on 9 June 2017. The Rural Economy and Connectivity Committee has been assigned as the lead committee in scrutiny of the Bill. 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.”

Scottish Government, 2017¹

The Bill focuses on provisions designed to strengthen and protect Scotland's island communities. Key provisions include-

1. The development of a National Islands Plan, which would set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. Rather than set out a proposed plan, the Bill provides that, following further consultation, the first National Island Plan would be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force.
2. The introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions. Under the Bill public authorities, when introducing a new or revised policy, strategy or service, would have to prepare an island communities impact assessment when the impact on island communities is likely to be different from the effect on other communities.
3. The protection of the Scottish parliamentary constituency boundary of Na h-Eileanan an Iar from variation.
4. The allowance of exceptions, for inhabited islands, to the standard three or four member ward rule for local government electoral wards.
5. The introduction of a regulation-making power for the Scottish Government to create a licensing scheme, following a request from a local authority, in relation to works in or under the sea in the coastal waters surrounding islands for up to 12 nautical miles.

Whilst this Bill does not, in light of Scotland's decision in 2014 to remain part of the UK, reflect any constitutional change for the islands, it does reflect some of the aspirations and themes present in the Our Islands Our future campaign and the subsequent Scottish Government commitment to the islands. Other early aspirations for the islands have been, or are likely to be, reflected in legislation and policy relating to public bodies, the Crown Estate, community empowerment and local democracy. There is, however, a lack of detail on what might be included in an islands plan, and it is likely that stakeholders will be concerned about the lack of explicit reference to key concerns such as infrastructure and access to public services.

Embedded in much of the early policy stance and external campaigning on behalf of the islands was a focus on strengthening the voice of island communities within the EU. What remains to be seen is the impact that Brexit may have on Scotland's islands, and how the Scottish and UK Governments will react to this.

This briefing aims to give an overview of the background to the Bill's introduction, and highlight the areas covered by pre-legislation campaigning which do not feature in the Bill. Although detail is given on each section of the Bill, an effort has been made to avoid replicating the detail provided in the Scottish Government's Policy Memorandum, including its summary of consultation responses.

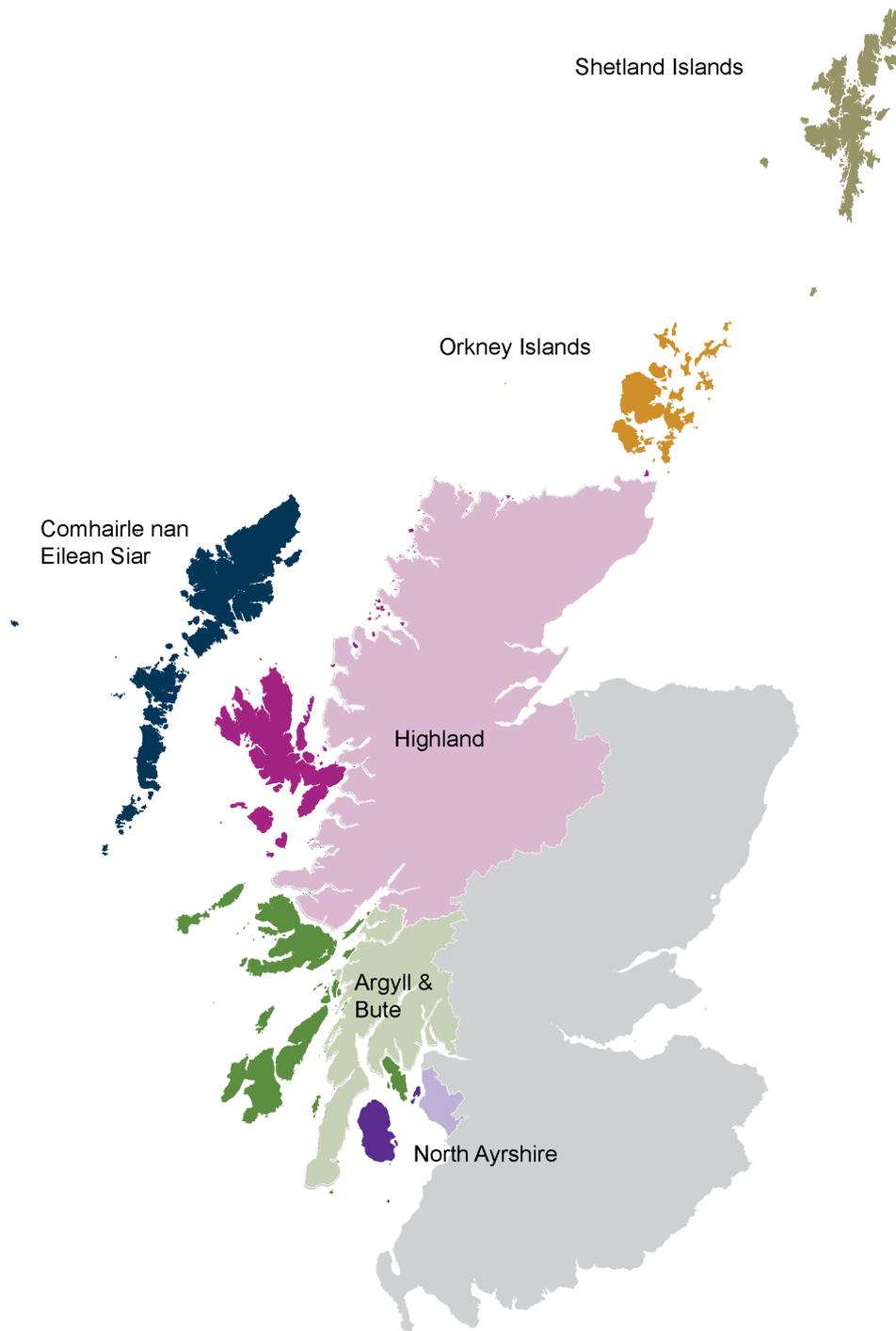
Background

Scotland's islands

At the time of the 2011 Census, there were 93 inhabited islands in Scotland, with a population of 103,700 - 2% of Scotland's population ². Of these islands, only five are connected to the Scottish mainland by bridge or causeway ³. Residents of more remote islands rely on ferry crossings and air travel to reach the mainland and larger islands, and key services such as secondary and higher education, care, and medical services.

Scotland has three island authorities - Orkney, Shetland and Comhairle nan Eilean Siar (Western Isles). In addition, the Highland, Argyll and Bute and North Ayrshire local authorities cover island regions as well as mainland regions.

Figure 1: Scotland's islands



Scotland's Census 2011

Scotland's [Census findings show](#), in broad terms, how island communities differ from the mainland. ²

Demographics

The population of the islands increased by 4 per cent between 2001 and 2011, more than reversing the 3 per cent decrease recorded between the 1991 and 2001 Censuses. The average island resident was older than in Scotland – their median age was 45 (it was 41 in Scotland). While 21% of island residents were aged 65 or over, the proportion nationally

was 17%. The proportion of island residents aged under 16 fell from 20% in 2001 to 17% in 2011 ² .

Health

According to the National Records for Scotland's report, [Scotland's Census 2011: Inhabited islands](#) ² , island residents-

“ reported their general health as marginally better than the Scotland population as a whole: 83% of island residents reported their health as being ‘Very good’ or ‘Good’ compared with 82% for Scotland. The proportion of island residents with a long-term (lasting 12 months or more) health problem or disability that limited their day-to-day activities was just under 20%, similar to the proportion for Scotland.”

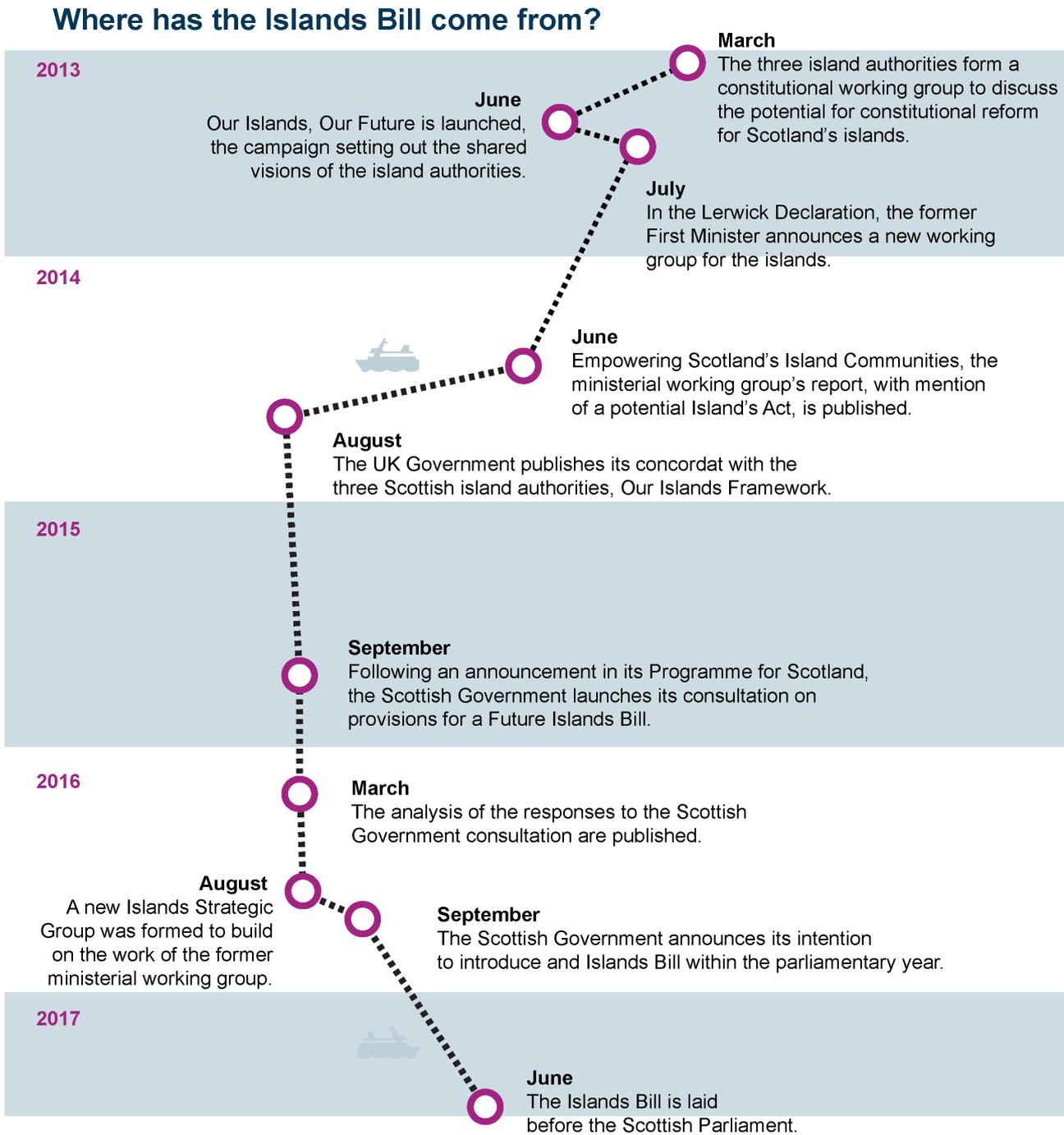
National Records of Scotland, 2015²

Economic Activity

The proportion of island residents aged 16 to 74 who were in employment increased from 63% in 2001 to 67% in 2011. Island residents were more likely to be self-employed (13%) or part-time employees (16%) than in Scotland as a whole (7% and 13% respectively). For island residents aged 16 to 74 in employment, the proportions working in ‘Agriculture, forestry and fishing’ (7%) and ‘Construction’ (11%) in 2011 were higher than in Scotland (2% and 8% respectively). The proportion of island residents working in the ‘Services’ sector increased from 70% in 2001 to 74% in 2011 ² .

The path to legislation

Figure 2: Timeline showing the steps leading to, and including, the introduction of the Islands (Scotland) Bill.



Our Islands, Our Future

In Spring 2013, following the announcement that there would be a Scottish Independence Referendum, Scotland's three island authorities - Orkney, Shetland and Comhairle nan Eilean Siar - formed a joint constitutional working group. The aim of this working group was to consider the relevance, potential impact and opportunities posed by possible constitutional reform⁴.

On 17 June 2013 the three authorities launched a joint campaign - [Our Islands Our Future](#) (OIOF). The campaign was "non-partisan, and took no position on the outcome of the Referendum, but sought to engage and negotiate with political leaders and decision makers on either side of the independence debate to ensure that the particular nature and needs of Scotland's Island groups were recognised and taken fully into account" ⁴ .

As part of its research, OIOF looked at constitutional models for other islands, along with the various EU treaties and regulations which affect the islands. The information sources and reading list ⁵ produced as part of its work provide a sound overview of the research which helped to drive the aspirations of the campaign.

The [joint position statement](#) of the three authorities stated that-

“ The Islands Councils seek to negotiate with the Scottish Government over additional powers for the Islands such as: ”

- Control of the sea bed around the islands, allowing revenues currently paid to the Crown Estate to be channelled into local needs. ”
- New grid connections to the Scottish mainland to allow wave, tidal and wind energy resources to generate maximum benefits for the islands. ”
- New fiscal arrangements to allow the islands to benefit more directly from local resources, including renewable energy and fisheries. ”
- Recognition of the status of the three island groups in a new Scottish Constitutional Settlement and within the European Governance Framework.”

Our Islands Our Future, 2013⁶

Lerwick Declaration

On 25 July 2013 the former First Minister, Alex Salmond, [announced](#) ⁷ that a new ministerial working group would form to look at further empowerment for Scotland's island communities. The group would include representatives from the Our Islands Our Future campaign. The work of this group culminated in the publication of its prospectus, [Empowering Scotland's Island Communities](#) ⁸ , on 16 June 2014.

Empowering Scotland's Island Communities

The vision set out in [Empowering Scotland's Island Communities](#) ⁸ is predicated on the expected transfer of powers that would take place in the event of Scotland becoming independent. The report links to the vision for Scotland's constitution as set out in [Scotland's Future](#) ⁹ , and as such there is an emphasis on the benefits of Scottish independence to Scotland's island communities. For instance, the prospectus notes the benefits of greater powers over taxation and public spending for island authorities. Likewise there is an emphasis on giving islands, post-independence, greater representation within the European Union, including providing better grounding for arguing against the application of State aid rules.

The prospectus introduces a potential Islands Act, which would include focus on 'island-proofing', the protection of constituency boundaries for the Western Isles, and the extension of provisions held within the [Zetland County Council Act 1974](#)¹⁰ and [Orkney County Council Act 1974](#) to the Western Isles. The Act would also recognise the status of island communities within the constitution of an independent Scotland.

The aspirations for an Islands Act as set out in *Empowering Scotland's Island Communities* have been, following consultation, carried over to the draft Islands Bill. The exception to this, in light of the outcome of the 2014 referendum, is the omission of any constitutional status for the islands.

There were, in addition, a number of other aspirations which were not presented as being part of a potential Islands Bill. The prospectus sets out a vision for jointly-delivered public services, much of which has been delivered as part of the [Public Bodies \(Joint Working\) Scotland Act 2014](#)¹¹.

The prospectus also speaks of the redistribution of income which at the time fell under Crown Estate control. On 1 April 2017, powers over the revenue and management of Crown Estate resources in Scotland were formally transferred from the UK Government¹². The Scottish Government, in early 2017, ran a [public consultation on a potential framework for management of the Crown Estate](#), which at the time of writing was still under consideration. The Scottish Government has, however, "already committed to providing the net revenue from marine activities out to 12 nautical miles to coastal and island councils"¹².

The prospectus notes aspirations to enhance islands' well-being, and harness islands' natural resources. The Scottish Government stated its commitment to supporting local democracy in its [Programme for Scotland 2016-17](#)¹³, when it announced that it would be launching a consultation "to find out what electoral reforms Scottish citizens would like to see taken forward in future legislation".

In addition, Scottish Government officials confirmed that Scotland's three Island local authorities had held discussions with the Minister for Transport and the Islands, Humza Yousaf MSP, on proposals to realise opportunities for economic growth in the islands and enhance local democracy¹⁴. Finally, the enactment of the [Community Empowerment \(Scotland\) Act 2015](#) is likely to have an impact on island communities.

It is reasonable to assume that any legislation and policy on local democracy may help to support some of those aspirations for Scotland's islands which fall outwith the Islands Bill.

UK Government Islands Framework

On 15 August 2014 a framework agreement between the UK Government and Scotland's three island authorities was launched. The first such framework of its kind in the UK, [Our Islands Framework](#)¹⁵ was the UK Government's direct response to the OIOF campaign.

Although the Framework is focused around the three island authorities, the report highlights that similar principles could apply to other islands-

“ It is noted that, in particular cases, many island and rural communities in Scotland face some similar challenges. This framework does not exclude or supersede those interests and, where applicable, bilateral discussions will be held with other areas with similar interests. ”

Scotland Office, 2014¹⁵

The framework sets out working arrangements between the three Islands Councils and the UK Government on issues that the three Councils have raised with the Government and for which the UK Government holds lead or shared responsibility.

Key points include-

- The establishment of shared values and improved lines of communication between the island authorities and the UK Government, including the introduction of annual summits between leaders and Chief Executives of the three Islands Councils and the Secretary of State for Scotland to discuss matters of strategic importance and implementation of the framework.
- A collaborative approach to island-proofing, and the production of an Annual Statement of Collective Priorities.
- A commitment to supporting economic growth in the sectors which are predominant and strong within the islands.
- A joint-working approach to strategic decision-making on future priorities for the oil and gas industry, including island representation at the UK Government-chaired PILOT Forum.
- A commitment to joint-working approach on harnessing the renewables potential of the islands. This includes a UK Government commitment to pursuing EU state aid approval aimed at sharing allowing the higher capital and operational costs of the renewables sector within the islands.
- The development of an engagement charter to ensure that the three island authorities' interests are heard and recognised in matters relating to the Crown Estate, and aims towards maximising community ownership of foreshore assets as much as legislation allows.
- A commitment to seeking fiscal measures which ease the burden of additional transport costs for island residents.
- A commitment to improving postal services to and from islands.
- A commitment to improving mobile coverage and broadband across island regions.
- Steps to improve Islands Councils' involvement in EU decision-making.

Representing island communities - wider context

Outside of the Our Islands Our Future campaign, and the subsequent agreements with the Scottish and UK Governments which have helped drive legislation, there are a number of different organisations and bodies representing the interests of island communities across

Europe. The embedding of island planning in legislation, however, would appear to be a newer concept with few examples. SPICe research suggests that much islands legislation in other countries relates predominantly to fundamental changes to the constitutional status and/or ownership of islands. The closest example to proposed Scottish legislation would appear to be that of the Falkland Islands, whose Programme for Government for 2014-18 took the form of an [islands plan](#)¹⁶, the themes of which fall within the same priorities as the Scottish Government's aspiration for its islands.

European Small Islands Federation

The [European Small Islands Federation](#)¹⁷ (ESIF) formed (as the European Small Islands Network) in 2001, with Scotland being one of the six founding members. The federation acts at two levels. At a local level, the federation aims to strengthen islands' cultural identity and facilitate the sharing of information between members. At a European level, the Federation aims to represent small island issues on an EU platform.

The [Scottish Islands Federation](#)¹⁸, which formed in 2000, represents Scotland within the European Small Islands Federation. An independent federation representing island development trusts, island community councils and island-based community benefit organisations, the Scottish Islands Federation has similar aims to the ESIF in terms of representing the voice of Scotland's island communities.

The Smart Islands Initiative

The [Smart Islands Initiative](#)¹⁹ is a bottom-up effort of European island authorities and communities. It seeks to convey the significant potential of islands to function as laboratories for technological, social, environmental, economic and political innovation. The Network of Sustainable Greek Islands – DAFNI, with 44 island local and regional authorities from Greece as members, currently coordinates the Smart Islands Initiative. Within Scotland, Shetland Council, the Highland Council and North Ayrshire Council are current members of the Initiative.

The origins of the shared-forum approach prior to the Smart Islands Initiative, and the Scottish islands' involvement, stretches back to 1993, when ISLENET, the first network of European island authorities promoting sustainable energy and environmental management, was formed²⁰.

Changes impacting legislation

Scottish independence

As noted, the original aims of the OIOF campaign and [Empowering Scotland's Island Communities](#) were closely linked with the Scottish Government's aspirations for independence. Scotland voted 55.3% to 44.7% against independence in the referendum held on 18 September 2014²¹.

On 27 June 2017 the First Minister, Nicola Sturgeon, [announced](#) that any plans to hold a second referendum would be placed on hold until the outcomes of the Brexit process were

better known ²². The Islands Bill, as laid, seeks to empower island communities. However, potentially as a result of the Scottish Government's current stance on independence, the original aspirations relating to reflecting the constitutional status of Scotland's islands in legislation are not included.

EU membership

A strong aim of both the OIOF campaign and of the Scottish Island Federation (and associated EU bodies) is to represent the interests of Scotland's islands at an EU level. [Empowering Scotland's Island Communities](#) specifically notes the aims of improving island representations within the EU forum, and arguing the case for Scotland's islands when accessing EU funding. Having been published after the triggering of Article 50 on 29 March 2017, the draft Bill, as can be expected makes no reference to these original aspirations.

As noted, at the [2011 census](#) 7% of those employed in Scotland's islands worked in agriculture, forestry and fishing (as opposed to 2% in Scotland as a whole). Given that these areas are tied heavily to both EU regulations and EU funding, it's reasonable to assume that Brexit will have a strong impact in this area. The Scottish Islands Federation set out its concerns in a January 2017 [briefing](#) ²³.

There is currently little information about the UK Government's approach following Brexit and specifically how Brexit will affect the islands. This effect of Brexit on the islands may in part depend on whether a transitional deal is agreed with the EU, or the nature of the future relationship between the UK and the EU. As a result of the UK Government's proposals outlined in the European Union (Withdrawal) Bill, all EU law, including EU Regulations will be converted into UK law on the day the UK leaves the European Union. As a result, the relevant EU legislation affecting Scotland's islands will continue to be applicable in the UK following Brexit. On the issue of replacing EU funding following Brexit, neither the UK or Scottish Governments have set out an approach at this stage.

Consultation and Bill Introduction

In September 2015, following an announcement in its [Programme for Scotland](#)²⁴, the Scottish Government launched its [Consultation on provisions for a Future Islands Bill](#). This consultation focused on islands proofing, proposals for a National Islands Plan, empowering Scotland's island communities, constituency protection for Na h-Eileanan an Iar, and local government electoral wards.

The consultation closed on 23 December 2016. This briefing will not replicate detail on the Scottish Government's consultation, however all responses, along with an independently produced summary of consultation responses are [publicly available](#).

In August 2016, a new Islands Strategic Group was established to build on the work of the previous Island Areas Ministerial Working Group and the Empowering Scotland's Island Communities prospectus. The Group is chaired by the Minister for Transport and the Islands, Humza Yousaf MSP, and its membership includes the Leaders and Chief Executives of Shetland, Orkney, the Western Isles, Argyll & Bute, Highland and North Ayrshire Councils.

The remit of the group will be to consider strategic issues affecting the inhabited island communities of Scotland and to ensure greater involvement of the relevant local authorities in helping identify and design solutions to the unique needs and challenges these communities face.

The Scottish Government announced, in its [Programme for Scotland 2016-17](#)¹³, that an Islands Bill would be introduced within the parliamentary year:

“ The Bill will build on the work of the Island Areas Ministerial Working Group and last year's consultation. It will reflect the unique needs of Scotland's islands and include measures such as: • provision for island-proof future legislation and policies • creation of a National Islands Plan • statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency boundary • greater flexibility around councillor representation (ward sizes) within island communities • extension of powers to island councils”

Scottish Government, 2016¹³

The [Islands \(Scotland\) Bill](#)²⁵ was introduced to Scottish Parliament on 9 June 2017. The [Rural Economy and Connectivity Committee](#) has been assigned as the lead committee in scrutiny of the Bill.

Bill Contents

As this briefing seeks to provide a background and overview of the proposed legislation, an effort has been made to avoid replicating the detail provided in the Scottish Government's [Policy Memorandum](#), including its summary of consultation responses.

As a result, the following section is purely a brief summary of each part of the Bill, with a reflection on how this links to pre-consultation work noted where applicable.

Part 1 of the Bill is not mentioned in detail in the following section as it purely sets out key definitions used within the Bill.

Part 2 - National Islands Plan

Part 2 of the Bill places a duty of the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a 'National Islands Plan'. This would set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. One of the key aims of this plan would be to link the various policies, strategies and services which support outcomes for island communities together.

Rather than set out a proposed plan within legislation, the Bill provides that, following further consultation, the first National Island Plan would be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force. Although the Policy Memorandum notes that the plan would span multiple policy areas, these policy areas are not explicitly mentioned in the Bill or accompanying documents.

Once published, it is expected that the plan would provide a structure for reporting on the work of the Scottish Government and its agencies in sustaining and supporting island communities. A National Islands Plan Progress Report would be laid before the Scottish Parliament, and published, on an annual basis following the publication of a new or revised plan.

Given that a National Islands Plan will not be consulted on and developed until after the passing of the Bill, it is not possible to comment at this stage how far this will go towards meeting the aspirations of pre-legislation campaigning and commitments. Whilst it may have been possible for an Islands Plan to have been developed without legislation, this model follows the example of past legislation, such as the Climate Change (Scotland) Act 2009²⁶ and the Marine (Scotland) Act 2010²⁷.

Part 3 - Duties in relation to Island Communities

Par 3 of the Bill makes provision for the introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions. Under the Bill, the 66 public authorities cited, when introducing a new or revised policy, strategy or service, would have to prepare an island communities impact assessment when the impact on island communities is likely to be significantly different from the effect on other communities.

The process is likely to cover identifying the potential direct or indirect consequences that new or revised legislation, strategies or services might have on Scotland's island communities, ensuring the assessment of these potential impacts, and taking adjusting proposals accordingly.

Prior to the publication of guidelines on island-proofing, further consultation would take place. Once this part of the Act comes into force, public bodies covered by legislation would be expected to report annually on the impact of island-proofing on their functions and activities. Scottish Ministers would also report annually, as part of reporting on progress against the National Islands Plan.

The form of island-proofing is very similar to that of the Public Sector Equality Duty introduced as part of the Equality Act 2010, which came into force in April 2011. This suggests that the process involved, once implemented, may be similar, and as a result familiar to those public bodies with a duty under the Act.

The proposals for island-proofing reflect the Scottish Government's early aspirations for the Bill, as announced in [Empowering Scotland's Island Communities](#). It is, however, not clear what the outcomes of island-proofing, for instance actions or funding to mitigate the impact of new policies on islands, might be.

Part 4 - Representation of Island Communities

Part 4 of the bill focuses on strengthening representation of the islands.

Constituency of Na h-Eilneanan an Iar

Currently, under Schedule 1 to the Scotland Act 1998, Orkney and Shetland are fixed as two of the 73 constituencies for the purposes of elections to the Scottish Parliament: this ensures that their boundaries cannot be varied. The Na h-Eilneanan an Iar Scottish parliamentary constituency does not have this statutory protection at present but section 13 of the Bill will provide this, using the powers transferred to the Scottish Parliament by the Scotland Act 2016.

This means that all three island authorities will have the same protection in terms of constituency boundaries, and meets the stated intentions of the Scottish Government set out in [Empowering Scotland's Island Communities](#).

Local Government elections

Under section 1 of the Local Governance (Scotland) Act 2004 (the 2004 Act) each electoral ward in Scotland has to return three or four councillors. When designing wards, the Local Government Boundary Commission for Scotland is required to make recommendations in accordance with that section and apply the rules set out in Schedule 6 to the Local Government (Scotland) Act 1973 (the 1973 Act), which include the requirement that the ratio of electors to councillors in each ward in a council area shall be, as nearly as may be, the same.

In practice, this means that some island communities will find themselves part of a ward which also includes part of the mainland, and may be represented by a councillor who is not resident on an island. The Bill provides the flexibility for the Local Government Boundary for Scotland to recommend to Scottish Ministers electoral wards of only one or two members where this would lead to island communities being better represented.

This part of the Bill supports the aspirations of pre-legislation campaigns and the Scottish Government to better represent island communities.

Part 5 - Development in the Scottish Island Marine Area

Part 5 of the Bill sets out plans for the introduction of a regulation-making power for the Scottish Government to create a licensing scheme in relation to any works in or under the sea in the coastal waters surrounding islands for up to 12 nautical miles. This follows on from the Scottish Government's commitment in [Empowering Scotland's Island Communities](#) to seek to extend provisions held within the [Zetland County Council Act 1974](#)¹⁰ and [Orkney County Council Act 1974](#) to the Western Isles.

Although this does not directly replicate provisions in the 1974 legislation, as per the original aspirations for an Islands Act, the proposals would allow Scottish Ministers to lay regulations which give local authorities greater power over licensing for marine development. The Scottish Government would undertake a further consultation exercise before laying draft regulations before the Scottish Parliament. This provision within the bill does not refer specifically to Comhairle nan Eilean Siar, which suggests that any forthcoming regulations would apply to all of Scotland's islands, not just those within the island authorities.

Financial Memorandum

As required under Rule 9.3.2 of the Parliament's Standing Orders, a Financial Memorandum (FM) has been published to accompany the Bill. The FM suggests that the majority of expenditure in implementing the provisions set out within the Bill would be administrative.

An overall costing range is not set out, as Parts 4 and 5 of the Bill may have varying costs depending on the level of consultation and demand for services, as well as the interaction of reviews to ward boundaries with the existing work of the Local Government Boundary Commission for Scotland.

As the National Islands Plan is expected to cover a five year period, SPICe has estimated the costs of the Bill over implementation and the first five years of operation as far as is possible. Part 2 of the Bill has a fixed estimated cost of £142,000 over the first five years. Part 3 of the Bill, for the same time period, has a fixed estimated cost of £329,931. These figures cover the total costs to the Scottish Government, local authorities and other public bodies, and in both cases the cost of implementation has been added to the ongoing costs for a five year period.

The review and adjustment of wards, and the establishment of a marine licensing scheme, under the terms of the Bill, are demand driven. As a result, the costs of implementing these parts of the Bill cannot be accurately estimated. It could be said that these sections of the Bill represent the highest potential for increasing the costs of the legislation should demand prove high.

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