



POLICY AND RESOURCES COMMITTEE:

2 DECEMBER 2015

**CONSULTATION ON PROVISIONS FOR A FUTURE ISLANDS BILL**

Report by Chief Executive

**PURPOSE OF REPORT** To allow Members to agree the basis of the Comhairle's response to the Scottish Government's Public Consultation on the provisions to be included in a Future Islands Bill.

**COMPETENCE**

1.1 This Report is concerned entirely with legal and policy matters.

**SUMMARY**

- 2.1 On 30 September 2015, the Scottish Government published a Consultation on Provisions for a Future Islands Bill. The aim of the consultation is to seek the views of interested stakeholders on plans for more power and protection for Scotland's islands. The consultation document is available at <http://www.gov.scot/Publications/2015/09/5388> and acknowledges that the consultation follows on from the discussions and negotiation between Scottish Government and *Our Islands: Our Future* about a particular set of powers and arrangements that should be in place for the Islands Councils that recognises their particular geographical circumstances, the particular needs they have in terms of providing services to their communities and the desire to enhance local democracy based in the Islands.
- 2.2 The Consultation seeks views on five separate but related issues as more particularly described in the body of the Report: Island Proofing; Empowering Island Communities; National Islands Plan; Statutory Protection for the Na h-Eileanan an Iar Scottish Parliamentary Constituency Boundary and Local Government Electoral Wards. The consultation poses questions in relation to each of these matters. A draft response is appended to the Report.
- 2.3 It is suggested that the principles established by the Community Empowerment (Scotland) Act 2015 and the work of the Commission on Strengthening Local Democracy are relevant to this consultation. It is therefore key that the views of all stakeholders, particularly communities, are reflected in the responses to this Consultation. To facilitate this, the Comhairle has publicised the Consultation, provided a link on the front page of its website, and the Leader has written to all Community Councils encouraging them to participate in the Consultation and offering to attend any meeting to discuss the potential impact of an Islands Act. At its meeting on 18 November 2015, the OHCPP agreed to respond to the consultation as a Partnership and a meeting of an extended Executive Group has been arranged to facilitate this.

**RECOMMENDATION**

- 3.1 **It is recommended that the Comhairle:**
- (a) **agree that the draft response appended to the Report form the basis of the Comhairle's response to the Consultation on Provisions for a Future Islands Bill and that it be delegated to the Chief Executive, in consultation with the Chair and Vice-Chair of the Committee, to finalise the response taking account of any views expressed by the Comhairle; and**
  - (b) **authorise the Chief Executive, in consultation with the Chair and Vice-Chair of the Committee, to agree the finalised terms of the *Our Islands: Our Future* response for the Comhairle's interest.**

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## BACKGROUND

- 4.1 The consultation document states that its aim is to seek the views of interested stakeholders on plans for more power and protection for Scotland's Islands. It is intended that these views help shape the development of a future Islands Bill that will allow the islands to build a more prosperous and fairer future for their communities.
- 4.2 The document references the *Our Islands: Our Future* Campaign launched by Orkney and Shetland Islands Councils and the Comhairle in 2013 which sets out the Islands Councils' vision for a stronger future for islands communities in the context of the constitutional debate around the Independence Referendum of 2014. At that stage the Islands Councils called upon the Scottish and UK Governments to commit, whatever the outcome of the Referendum, to ensuring that the needs and status of islands areas were clearly recognised in the changed nature of the governance of Scotland.
- 4.3 In particular, the Islands Councils sought additional powers and resources to give them a greater ability to shape their own destiny. These included:
- Control and management of the seabed around the islands, allowing revenues currently paid to the Crown Estate to be channeled into local needs;
  - New grid connections to the Scottish Mainland to allow world class wave, tidal and wind energy resources to generate maximum benefits for both islands' and the Scottish economy;
  - New fiscal arrangements to allow the islands to benefit more directly from the harvesting of local resources, including renewable energy and fisheries; and
  - Clear recognition of the status of the three island groups in the new Scottish Constitutional settlement and within the European Governance Framework.
- 4.4 The Scottish Government has stated that these proposals are based on its belief that the people who live and work in Scotland are best placed to make decisions about their future and that the Scottish Government supports the principle of subsidiarity and local decision making. In June 2014 Scottish Government's Prospectus for the Islands *Empowering Scotland's Islands Communities* was published. It should be noted that, notwithstanding that this Prospectus resulted from the work of the Islands Areas Ministerial Working Group with the three Islands Councils, that its provisions applied to all 93 of Scotland's island communities. In November 2014, Derek Mackay MSP was appointed as Minister for Transport and Islands to "provide a focus for Islands issues and a voice for all 93 of Scotland's Islands Communities at the heart of Scottish Government".

## ISLAND PROOFING

- 5.1 The principle of Island Proofing is about building a broad based islands awareness into the decision making process of relevant parts of the public sector. Island Proofing consists of considering the particular needs and circumstances of island communities and in taking account of island characteristics when the Scottish Government and other relevant public authorities are exercising their functions and making decisions. The Scottish Government committed in the Prospectus to consulting on the inclusion of this principle within a future Islands Bill to formalise this approach in law. It is anticipated that this would include the Government considering:
- When legislating whether particular functions and responsibilities could be given to island communities;
  - When legislating whether there was a particular need for differential application of legislation for island communities;

- The applicability of the principles contained within the Reference Framework on Regional Democracy of the Congress of Local and Regional Authorities of the Council of Europe; and
  - When developing, formulating and implementing policy, the needs and circumstances of island communities.
- 5.2 The document also references the framework of the 1984 Committee of Enquiry into the Functions and Powers of the Islands Councils of Scotland (the Montgomery Committee) that Acts of Parliament can in certain respects be varied or adjusted in their application to islands areas where there is a reason to do so.
- 5.3 This process of Island Proofing would provide an opportunity for the Scottish Parliament to consider, on a case by case basis, whether this might apply to particular pieces of legislation. The document also recognises that certain other public bodies are also required to take account of the specific needs and circumstances of island communities while carrying out their functions and duties and therefore seeks the view of stakeholders as to whether the Scottish Government should have powers to issue statutory guidance to relevant public bodies concerning Island Proofing. The suggested responses to questions 2 and 3 address this and the Comhairle is asked to consider particularly whether Island Proofing should apply to all Community Planning Partners including local authorities. It is suggested that such an approach would be consistent with the Community Empowerment (Scotland) Act 2015.

## **EMPOWERING ISLAND COMMUNITIES**

- 6.1 This section seeks views on whether additional powers and functions could be passed to island councils to benefit or better protect the island communities they serve.
- 6.2 The first question in this section asks whether Islands Councils and Councils with island responsibilities currently have sufficient powers to deliver positive outcomes for their local island communities. It is suggested that this cannot be answered as a straight affirmative or negative as the Comhairle and other councils currently use their current powers to deliver positive outcomes for their communities, however the granting of further powers would enable further positive outcomes to be provided. It is also suggested that the powers in relation to locality planning in terms of both Health and Social Care Integration and Community Planning could be further developed to the benefit of communities. The current legislation can restrict closer working between public bodies and stand in the way of public sector reform which may rationalize services to provide better outcomes and realise efficiencies..
- 6.3 Specific questions are asked as to the applicability of the provisions in the Zetland and Orkney County Council Acts of 1974 to the Western Isles and other Councils. It is suggested that the granting of such powers would enhance the Comhairle's ability to serve the communities of the Western Isles.

## **NATIONAL ISLANDS PLAN**

- 7.1 This section seeks views on whether a legal duty should be placed on all future Scottish Governments to prepare a "National Islands Plan" setting out ongoing commitments across all policy areas of government to support, promote and empower island communities. This proposal would see provision within a future Islands Act for a duty to be placed on Scottish Ministers to publish a "National Islands Plan" which would set out an ongoing range of commitments across all policy areas of the Government to support, promote and empower island communities to build a wealthier and fairer future for themselves. The process followed would be similar to that for the National Gaelic Language Plan under the Gaelic Language (Scotland) Act 2005. Together with the issue of statutory guidance on Island Proofing to other public bodies the consultation states that this provision is designed to ensure that the public sector in Scotland plays its part in creating a sustainable future for Scotland's Island communities. Scottish Ministers would report annually to the Scottish Parliament on progress with the plan.
- 7.2 It is suggested that the Comhairle support the development of such a plan to facilitate monitoring of commitments following the island proofing process.

## **CONSTITUENCY PROTECTION FOR NA H-EILEANAN AN IAR**

- 8.1 Under Schedule 1 to the Scotland Act 1998, the two Scottish Parliamentary Constituencies for Orkney and Shetland have protection under law. The Na h-Eileanan an Iar Scottish Parliamentary Constituency does not currently have this statutory protection. The two UK Parliamentary Constituencies of Orkney and Shetland and Na h-Eileanan an Iar do enjoy such protection.
- 8.2 Following the enactment of the Scotland Bill, the authority to give such statutory protection will pass to the Scottish Parliament and it is proposed that the Scottish Parliament Constituency of Na h-Eileanan an Iar enjoy that protection. It is suggested that the Comhairle should be supportive of this principle.

## **LOCAL GOVERNMENT ELECTORAL WARDS – POPULATED ISLANDS**

- 9.1 Section 1 of the Local Government (Scotland) Act 2004 provides that each Electoral Ward in Local Government Elections must return three or four councilors. When designing wards the Local Government Boundary Commission for Scotland (LGBCS) is required to apply the rules in Schedule 6 to the Local Government (Scotland) Act 1973 which include the requirement that the ratio of electors to councilors in each ward in a council area shall be, as nearly as may be, the same.
- 9.2 Although the LGBCS can depart from the rule about the ratio where there are special geographical considerations, the combination of these two requirements currently requires that Islands must be grouped together even in circumstances where a ferry journey is required between them.
- 9.3 The Consultation seeks views on a proposed amendment to the 2004 Act to allow for wards covering populated islands to return two councilors or even one councilor. It would not affect the current reviews which will lead to wards for use in the 2017 Local Government Elections but could give LGBCS greater flexibility for future reviews alongside any other changes the Scottish Government may wish to apply in advance of the next review.
- 9.4 The Comhairle has on frequent occasions supported this proposal in representations to both Scottish Government and the Local Government Boundary Commission for Scotland. The requirement for wards to have either three or four members does not necessarily reflect either natural groups of communities nor the settlement pattern of the Western Isles and can be present practical difficulties for elected members due to the distances concerned and restrictions imposed by representing separate groups of islands. In the event that numbers of councillors fall further, there would be concerns that the size of 3 or 4 member wards would be a deterrent to candidates standing for election.

## ***OUR ISLANDS: OUR FUTURE***

- 10.1 As this Consultation has been produced as a direct result of the lobbying of Scottish Government by the *Our Islands: Our Future* campaign, it is considered appropriate that an *Our Islands: Our Future* response is submitted. Given the importance of the potential legislation the three islands councils each intend to submit their own responses addressing particular issues with the *Our Islands: Our Future* response focusing on issues of interest to all three island areas. Authority is sought for the Chief Executive, in consultation with the Chair and Vice Chair of the Committee, to finalise the terms of this response.

## **NEXT STAGES IN PROCESS**

- 11.1 Scottish Government has indicated that all responses will be analysed independently and considered together with any other evidence available to it. This would then form the basis of a draft Islands Bill which would be subject to further detailed consultation. Such consultation would require to take place after the Scottish Parliament Election in May 2016 as there is insufficient time in advance of that Election. It is anticipated that any Bill would complete its parliamentary process and become law by March 2017.