

POLICY BRIEF

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Searching for the Voice of the Island Communities in the Islands (Scotland) Bill

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Searching for the Voice of the Island Communities in the Islands (Scotland) Bill

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Recently, I was talking to a friend who comes from a Spanish island and mentioned the recently adopted Islands (Scotland) Bill, including the duty it imposes upon Scottish Ministers and relevant authorities to undertake an island communities impact assessment in relation to certain policies, strategies and legislation. My friend looked at me in positive bewilderment, and explained that she was used to seeing her own island often overlooked and somewhat forgotten by central government. This short brief wishes to start exploring whether my friend was right in praising the originality of the Scottish legislation in question, or whether her initial positive reaction would likely turn to frustration once the details of the Islands (Scotland) Bill were clearer to her. As is often the case, the truth stands very much in the middle. The Islands (Scotland) Bill is not the most progressive piece of legislation on islands that any country has ever put forward. However, the Bill is definitely not just rhetoric and does give island communities a voice in important Scottish wide decisions. This brief will explore this middle ground.

Islands Legislation and Local Communities

In analysing the Bill, the assumption that this short paper makes is that future island policy in Scotland (and elsewhere) will only be effective if it responds to the interests and needs of island communities. In other words, island communities need to be at the heart of all efforts (public and private) to promote socio-economic development on islands in Scotland. The question, hence, becomes whether the Islands (Scotland) Bill creates an enabling legal framework for island communities to truly participate in the processes that the Bill launches.

Initially focusing on the first two parts of the Bill, the analysis required is twofold. Firstly, it requires an examination of the role of island communities in the development of a National Islands Plan every five years and, secondly, scrutiny of the obligation to undertake an island communities impact assessment on behalf of Scottish Ministers and relevant authorities. Finally, this brief analyses the role afforded to island communities by section 12c of the Bill, which relates to the duty to consult.

A. National Islands Plan

A superficial read of the Bill initially appears to give island communities a strong, almost leadership like, role in the future implementation of the Bill. However, a closer look at section 4.1.a) gives a slightly different answer.

“In preparing the national islands plan, the Scottish Ministers *must* consult each local authority listed in the schedule; such other persons as *they* consider represent the interests of island communities; such persons (including members of island communities and other members) as *they* consider likely to be affected by or have an interest in the proposals contained in the plan.” (Emphasis added)

Evidently, the provision imposes a hard obligation upon Scottish Ministers, one they cannot escape; Scottish Ministers have to undergo a consultation process when preparing a national islands plan. This is where the island communities would think, and most likely want, to be included in the mandatory consultation process. However, it becomes very clear that only the local authorities listed in the schedule have to be consulted, with Scottish Ministers retaining discretion as to whether to also consult island communities.

B. Island Communities Impact Assessment

Very similar language can be found in the Part of the Bill that refers to the obligation upon relevant authorities and Scottish Ministers to undertake an island communities impact assessment in relation to policies, strategies and legislation. It must be made clear that it will not be island communities that identify which policies, strategies or Bills need to undertake such an impact assessment. This is, again, a decision that will be taken by the relevant authority or the Scottish Ministers themselves. In fact, section 8.1 reads as follows:

“A relevant authority must prepare an island communities impact assessment in relation to a policy, strategy or service, which, *in the authority’s opinion*, is likely to have an effect on an island community which is significantly different from its effects on other communities (including other island communities) in the area in which the authority exercises its functions.” (Emphasis added)

C. Duty to Consult

A section added in the last stage of the Bill provides for further interesting reading from an island community perspective. This section lays out processes that need to take place when changes are made to already existing policies. Section 12c) lays out a “duty to consult island communities” whereby:

“The Scottish Ministers *must* consult island communities before making a material change to any policy, strategy, or service, which, *in the Scottish Minister’s opinion*, is likely to have an effect on an island community which is significantly different from its effect on other

communities (including other island communities) in Scotland.” (Emphasis added)

This is similar language to that used in the sections which have already been analysed. However, the discretion of the Scottish Ministers in this case is counterbalanced by the power of local authorities:

“to request that the Scottish Ministers consult island communities under subsection (1) before making the change”... “Where the Scottish Ministers do not consider that a material change is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Scotland.”

In other words, it would seem that local authorities could override a decision of Scottish Ministers not to consult island communities because the change in the policy is not likely to have a significant different effect on island communities. This power would ensure island communities are truly at the very centre of the Bill. However, in receiving a request from a local authority asking the Scottish Ministers to consult island communities, the Scottish Ministers retain a right to reject such a request, provided, according to section 12C 5b), that they “publish an explanation of their reasons for not undertaking a consultation under subsection (1).”

Consequently, although the duty to consult affords island communities power over Scottish Ministers, it is limited by the latter’s right to reject a request for consultation. It is unclear why this slightly different approach to island communities consultations applies to changes in already existing policies and not to the adoption of new policies, legislation and strategies.

D. Unfinished Business

Whilst the previous excerpts from the Bill may portray a rather gloomy reality from an island community perspective, the overall analysis of the legislation as a whole offers a more positive outlook. In many ways, the Bill can be seen as a framework piece of legislation with several bits of unfinished business.

One example is section 8a) that provides for “Reviews of decisions relating to island communities impact assessment”. This is where island communities could still play a role. While they

may not have to be consulted as to which policies, strategies or acts need to undergo an island communities impact assessment, if island communities are given the possibility to trigger the review of decisions relating to an impact assessment, this may allow for a greater role for island communities through the 'backdoor' as such.

Another area of unfinished business is the necessary guidance on what will amount to an island communities impact assessment. In this case, island communities will only be consulted upon discretion of the Scottish Ministers, while, according to section 10.2 of the Bill, local authorities must be consulted.

Moving Forward

Rather than reading this analysis as a defeat for island communities in a Bill that aims to improve outcomes for islanders, the comments above are meant to open a space for debate aimed at clarifying that island communities still have a strong possibility to participate in and influence the implementation of the Bill. These are just some ideas of how island communities can move forward:

- 1) Where Scottish Ministers and relevant authorities retain ultimate discretion, they still have to consult local authorities. Island communities should target their respective local authority and, inasmuch as possible, go through them when it comes to the consultation process for the National Island Plan and island communities impact assessment;
- 2) Island communities should be represented in the ongoing work needed to "finish off" the Bill, especially in relation to the work that needs to be done when it comes to the reviews of decisions relating to island communities impact assessment (section 8A) and guidance about the assessment itself (section 10); and
- 3) Island communities should not underestimate the power that section 12 awards them, again through their local authority. The possibility for the latter to request Scottish Ministers to consult island communities in relation to a change in policy will be thoroughly considered by the Ministers. From a participatory perspective, it will not be easy for

them to reject such a request and, even if they do, they will have to publish their reasons for doing so. Island communities should make the most of this provision and, if they are not given a voice, share with other island communities and within their community the reasons given to them by the Scottish Ministers.

Conclusion

Whilst these are just some initial suggestions, there will be no progress if island communities are not fully aware of the Islands (Scotland) Bill. The latter, although not without its challenges, does afford opportunities for island communities and it is important that island communities find their voice in the implementation of the Bill.

Key resources:

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>

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