

Planning (Scotland) Bill – Post Stage 2

Island Communities Impact Assessment

Joint Statement by the Scottish Government and members of the Strategic Islands Group.

UPDATED – June 2019

Introduction

The Planning Bill is part of a wider programme of planning reform which has been supported by wide collaboration with planning authorities and other stakeholders throughout Scotland since the review of the system began in Autumn 2015.

In 2017, the Scottish Government made a commitment to island proofing the Planning Bill, in recognition of the particular challenges and opportunities for planning arising from the special circumstances of island communities. Following ongoing engagement throughout the course of the planning review, an intensive island proofing exercise was undertaken through a collaborative workshop, held on Friday 29 September 2017.

The main theme that emerged through all the discussions was the need to allow flexibility for the islands - acknowledging that their needs were very different to that of towns and cities.

The Bill was introduced to the Scottish Parliament in December 2017. Stages 1 and 2 of the Parliament's scrutiny has now been completed.

In the meantime, the Islands (Scotland) Act 2018 introduced a new duty for relevant authorities to have regard to island communities in carrying out their duties, including through the preparation of an island communities impact assessment. The assessment should describe the likely significantly different effects of a policy, assess the extent to which it can be developed or delivered to improve or mitigate the outcomes for island communities and explain the financial impact of this mitigation. Whilst this provision has not yet been enacted, this statement is intended to reflect the objectives and spirit of these new requirements.

To ensure continuity and that the full range of reforms are properly reflected, we have updated our earlier statement to highlight any further impacts arising from Stage 2 amendments.

PART 1 Issues and recommendations proposed in the Planning Reform Programme

The following statement sets out the challenges and opportunities arising from each of the 20 proposals for change which were outlined in the earlier consultation *Places, People and Planning* (January 2017) and the subsequent Scottish Government Position Statement (June 2017). Recommendations have and will be considered further by the Scottish Government as part of the preparation of future work on planning reform including the Bill, policy and guidance.

Proposal 1 Aligning community and spatial planning

It was agreed that an ideal scenario for some would be merging of the two processes to create one plan. Synchronised consultations would also be beneficial. In an island setting, it was envisaged that stronger linkages could be easier to achieve, given the smaller scale of authorities. The stronger weight given to a Single Outcome Agreement or Local Outcome Improvement Plan as compared to the development plan was noted. It was also recognised community planning may cover wider issues and care would be required to avoid diluting the local development plan.

Recommendation:

- *As these issues were considered to apply across all authorities, no island-specific recommendation was made.*
- *At Stage 2 of the Planning Bill, our proposals for stronger alignment were supported and therefore no changes to the impact on island communities are anticipated.*

Proposal 2 Regional partnership working

Islands are not a geographically contiguous region so this proposal may not be applicable – for example for identifying regional housing targets or shared issues. It will be important to ensure that where participation in regional partnership working is not opportune, proposals and concepts are not overlooked (e.g. in the consideration of national projects or areas of co-ordinated action). Infrastructure delivery does not tend to be shared, unlike the situation across city regions.

Recommendation:

- *It was proposed that any duty or powers should be worded flexibly to allow for regional collaboration only where relevant, rather than being universally required. Examples for join-up included aquaculture planning.*
- *At Stage 2, the existing arrangements for strategic development planning were reinstated by amendments, with some modifications (e.g. removal of the examination step and insertion of a new requirement for local development plans outwith the four city regions to address cross boundary matters). The Scottish Government expects to bring forward alternative proposals for strategic planning that would be more flexible than current arrangements for*

strategic development plans, but also provide a clearer duty in response to the views of the Committee. The implications for island authorities will depend to an extent on the specific wording of the Stage 3 amendment, and the need for flexibility for island communities is being taken into account as part of ongoing work to draft the alternative proposals.

Proposal 3 Improving national spatial planning policy

Views on the opportunities this could provide for streamlining development planning were mixed. Some felt that a national policy to help streamline local development plans would be welcome, allowing authorities to focus on 'local' issues. However others felt that having strong local policies within their development plan was preferred.

It was agreed that authorities should be given the chance to justify why they may not be following national policy. There should be flexibility to step away from the Scottish Planning Policy for some policy areas in particular. Examples included any requirement to demonstrate viability of proposals, given the different challenges of delivery in an island context. Consideration could be given to including a separate section on the islands in NPF / SPP.

Recommendation:

- *It was recommended that the NPF should be island proofed. This will now be a requirement under the Islands (Scotland) Act 2018 as a matter of course.*
- *Consideration should be given to the scale of impacts of a project when identifying national developments, rather than just the scale of the development itself. NPF should go further to support regionally important priorities as well as national projects. We will build this into the approach to co-producing the NPF.*

Proposal 4 Stronger Local Development Plans

The move to a 10 year review cycle for local development plans was felt to be sensible. However, the aspiration for a two year plan preparation period was considered to be unrealistic, given the logistics of site visits and small size of island authority planning teams.

The role of the gatecheck in justifying and agreeing departures from national policy was agreed to be important. It was also considered beneficial to design the gatecheck so that it could have a different approach that was tailored to island specific issues. A report to the gatecheck could outline the specific island circumstances involved.

There were mixed views on whether or not supplementary guidance should be retained or abolished. The case was made for retaining it for some technical subjects (e.g. aquaculture or wind energy). Retention of detailed technical policy for some topic areas would still be useful and should be considered further. Better integration of terrestrial and marine plans would also be helpful.

Recommendation:

- *Further consideration of the gatecheck in an island context would be useful – it will be important to ensure that an independent reporter understands the special circumstances of island authorities when considering departures from national policy.*
- *It would be useful for island authorities to define their own triggers for plan updates, to allow them to respond to local issues and pressures.*
- *Further consideration to be given to the links between marine and terrestrial planning, to identify any scope for simplification / reducing the number of plans. As a result of a Stage 2 amendment, alignment with the National Marine Plan will now be a requirement for NPF.*
- *There are no further significant changes to these findings following Stage 2, other than to note the need for flexibility in recognition of the different development context and more limited resources within island authorities.*

Proposal 5 Making plans that deliver

The viability of a housing site in the islands should not be subject to an appraisal if it is to be allocated in the local development plan – the situation is very different with no building by volume housebuilders and a significant share of applicants being single farmers or private individuals on windfall sites. Proposals must be realistic about expectations and delivery. Making it onerous to get a site allocated in the plan would reduce interest in the development plan and increase the reliance on windfall sites further.

Recommendation:

- *The very different housing markets in island authority areas should be recognised and any requirements for additional information on viability at the plan allocation stage should not apply. Conventional Housing Market Areas do not operate in all island or rural authority areas and are not an effective tool. There may be scope to strengthen requirements at the application stage and build into validation of applications.*
- *At Stage 2, a requirement for the National Planning Framework to set targets for the use of land for housing was inserted by a non-Government amendment. After Stage 2, the very different housing requirements and markets in island communities was again emphasised by the island authorities. As preparation of NPF4 progresses, we will consider further how this can be achieved in a way which continues to allow for flexibility in island communities.*

Proposal 6 Giving people the opportunity to plan their own place/Local Place Plans

There were mixed views on the proposal for local place plans. Whilst the principle was understood, the group shared some concerns about delivery. Questions were raised about the need for further plans when this is already done through community planning or by local development trusts. The latter could be a good model for a local place plan. The relationship with masterplanning was also discussed.

Challenges included resourcing to support communities who want to bring forward plans, putting pressure on small teams. It was expected that many communities on the islands would be interested but that expectations would need to be managed in light of resourcing constraints.

Recommendation:

- *Flexibility would be helpful, and any powers should avoid being prescriptive / introducing a new system of plans, to allow wider plans (e.g. locality plans) to become local place plans.*
- *At Stage 2 local place plans were supported by the Parliament, and relatively minor modifications to the provisions were made. It is therefore expected that the flexibility proposed will still be achieved.*

Proposal 7 Getting more people involved in planning

There was agreement with the principle, but concern about the practicalities, including capacity and the volume of information that community councils already have to deal with. The resources available to engage with people was also a concern. Many island communities are already very engaged, but it can still be difficult to involve people at the development plan stage (as opposed to applications). Greater efforts to involve children and young people could relate well to wider demographic objectives that aim to ensure more people stay on the islands. Community trusts could be particularly well placed to provide a long term view.

Recommendation:

- *There is an opportunity to build on experience in using digital communications and the place standard in Argyll and Bute and Shetland.*
- *There was support for ensuring planning forms part of the Curriculum for Excellence.*
- *The Planning Bill aims to improve early engagement in planning, and work is ongoing to support digital transformation of the system. No additional impacts are expected at this stage.*

Proposal 8 Improving public trust

Repeat applications do not tend to arise in the islands. There was agreement that greater structure for pre-application consultations would be helpful, to allow for feedback. This could benefit from stronger guidance, although it was also acknowledged that this is not an island-specific issue. It was noted that enforcement brings particular logistical challenges for island authorities.

Recommendation:

- *No island-specific recommendations were made.*
- *No further impacts are expected following Stage 2 of the Planning Bill.*

Proposal 9 Keeping decisions local

Given the relatively small number of cases considered by Local Review Bodies in the islands, it was noted that there can be a need for extra support in some of the authorities. In other authorities the LRB is also the planning committee so skills issues do not arise.

Recommendation:

- *No island-specific recommendations were made.*
- *No further impacts are expected following Stage 2 of the Planning Bill.*

Proposal 10 Housing land

There were mixed views on the role of the Housing Needs and Demands Assessment. There were some views that it is too complex and not relevant to an island context, but it was also noted that the process has improved significantly. It was recognised that this can be an onerous process for small teams although it did assist the process at examination.

There was some concern that if the NPF set housing numbers for some areas, but not others, then it might create a two tier planning system with infrastructure investment being directed to those areas with the highest numbers.

Recommendation

- *The NPF could set targets for specific parts of the country where there was demand and argument, but allow other areas (islands and other rural authorities) to set at a local level. In doing so, consideration must be given to infrastructure needs across Scotland as a whole. The distinct development context and demand profile of the islands suggests that island authorities should be able to determine their own targets at a regional and sub-regional level.*
- *As noted above, we will take this recommendation into account as work to prepare NPF4 progresses following the Planning Bill. A Stage 2 amendment requires targets for the use of land for housing to be included in the NPF, but*

the specific approach to this will require further consideration, and should reflect issues noted above.

Proposal 11 Closing the gap

It was noted that alternative housing delivery models, such as self-build, are already well established in the islands. The Argyll and Bute Standard House Project was noted as a good example of innovation.

Recommendation:

- *No island-specific recommendations were made.*
- *A Stage 2 amendment inserts a requirement for local development plans to identify sites that may be suitable for self-build housing. We will seek to learn from the experience of island authorities in taking this forward. It will be important to recognise that self-build should not be limited to identified sites and that the wider plan strategy can set criteria for site selection.*

Proposal 12 Simplified Planning Zones

Consideration was given to whether an island, as a whole or in part, could be designated as a Simplified Planning Zone (SPZ). This could turn the development plan on its head by allowing for any development that was in line with the scheme, a pro-development approach. Questions were raised about resourcing and whether fees could be raised to cover planning authority upfront work. It was also noted that it could take several years for delivery to come to fruition.

Recommendation:

- *No island-specific recommendations were made.*
- *SPZs have now been renamed as Masterplan Consent Areas (MCAs). Exclusions to MCAs include national and international protected areas, but the debate on whether or not they should apply to National Scenic Areas is expected to continue into Stage 3. The potential benefits of MCAs to island communities will be taken into account as part of this further consideration.*
- *It was agreed that clarity on where Masterplan Consent Areas are allowed is important, given the high proportion of land on some islands that falls within designated areas, and the authorities were not pressing for a change to allow MCAs within designated areas. It was also noted that planning policies on islands were already quite relaxed, and so not having to make an application for planning permission would be unlikely to make the difference to anyone looking to relocate to the islands.*

Proposals 13, 14 and 15 Infrastructure, funding and innovation

The group felt that for infrastructure provision to align with planning there needs to be a statutory duty within the Bill. It was emphasised that any infrastructure levy will

need to be flexibly applied. In an island context, there would be benefit from a levy being chargeable only in the case of a small number of high value projects, rather than to all development.

Recommendation:

- *Scope for flexibility in the design of an infrastructure levy should be considered further.*
- *The benefit of supporting infrastructure through statutory duties should be considered further.*
- *There was support for the enabling power for an infrastructure levy at Stage 2. The Scottish Government acknowledges that more work is required to develop a detailed design, and that this will also involve further consultation. Research to date has suggested that the levy would apply to development over a certain value, and if this approach is used it is likely that most island developments would be exempt.*
- *At Stage 2 a duty for the National Planning Framework to have regard to a wide range of other strategies was introduced to the Bill, and this includes the Infrastructure Investment Plan, National Transport Strategy and Strategic Transport Projects Review.*

Proposal 16 Skills

The island authorities have some experience in sharing skills on an ad hoc basis (e.g. aquaculture skills shared by Highland and Argyll and Bute, WOSAS, and conservation expertise used to be shared between Orkney and Western Isles). It was agreed that this was beneficial and had worked well. Other examples raised included building warrant work undertaken for other authorities, and validation processing.

There may be further opportunities for collaborative resourcing. This would require further communication and a fuller understanding of available skills. A more planned approach could support this.

Recommendation:

- *Island authorities to consider sharing of resources further, through their continuing liaison.*
- *No further impacts are expected at this stage, other than concerns about resourcing of new duties, as set out under Part 2 below.*

Proposal 17 Investing in a better service

It was noted that the recent increase to the maximum fee was not impacting on the resourcing of island authorities given the small number of major developments encountered.¹ The island authorities can have a higher level of non-fee paying work (e.g. EIA) and this can take up significant resource to realise positive development outcomes. An example of where in-house expertise has been offered to applicants and charged was raised.

Recommendation:

- *No island-specific recommendations were made.*
- *No further impacts are expected at this stage with the Bill still including provisions to support discretionary charges by planning authorities.*

Proposal 18 Performance

There were few issues arising from these proposals, although it was noted that performance reporting can have a significant impact on resourcing where there are small teams involved. The authorities asked that the performance reporting system is as simple as possible and that any further complexity should be avoided.

Recommendation:

- *No island-specific recommendations were made.*
- *At Stage 2, provisions relating to performance were removed from the Planning Bill through amendments. This remains an important issue for the Scottish Government to seek to resolve, given the critical link between improved performance and fees.*

Proposal 19 Efficient decision making.

The proportion of householder applications in some of the islands was reported to be relatively low, and so expanding permitted development rights to include more small scale householder applications would have less benefit. It was also noted that recently introduced permitted development rights have generated increased workloads due to requirements for prior notification and the wide scope of some of the developments affected (e.g. provisions for hill tracks affecting small lanes for crofters). Section 42 was also discussed and it was reported that interpretations can vary widely.

Recommendation:

- *There should be further discussion on these matters and the authorities will be invited to be involved in planned work on permitted development rights.*

¹ <https://hopsotland.files.wordpress.com/2019/02/finalised-hops-report-on-major-application-fees-040219.pdf>

- *At this stage work on permitted development rights is ongoing, with further consultation expected on priorities for increasing permitted development rights for certain types of development.*

Proposal 20 Digital

The authorities called for newspaper advertising requirements to be removed given the significant costs they generate. A requirement to submit all applications online would be beneficial in terms of resourcing and service delivery. Establishing common systems, where hardware and software can work together, would support sharing of services and collaboration in the future. Improved broadband to support digital improvements is essential and this will also open up opportunities for homeworking / repopulation of the islands.

Recommendation:

- *Comments to be fed back to digital task force to allow for special island circumstances to be taken into account in wider recommendations.*
- *Work on digital transformation of the planning system is ongoing and no further impacts are expected at this stage.*
- *The Scottish Government is also considering the impacts and costs arising from further publication and advertising requirements added by a range of Stage 2 amendments.*

PART 2 Additional duties and requirements introduced at Stage 2.

This part of the updated statement focuses on additional duties and requirements that were added to the Planning Bill as a result of amendments at Stage 2. Many of these amendments were not part of the original aims of planning reform and so had not previously been discussed with the island authorities.

The following key issues were identified in collaboration with the island authorities at this stage:

1. There are concerns about **extent of new duties and procedures** introduced by amendments collectively. When the Bill was introduced the authorities emphasised the importance of flexibility. The authorities consider this to be the most important tool they have at their disposal to support the needs of island communities. There were shared concerns about the introduction of numerous new duties and prescriptive requirements introduced by Stage 2 amendments and support for rationalisation at Stage 3. Island authorities may not have all the skills in-house to assess some new aspects of development planning (e.g. health) requiring joint working (e.g. with Integrated Joint Boards). Resourcing of a potentially more complex system is a major concern, particularly with additional duties having a significant impact on small planning teams in island authorities. There are some good examples of exchanging skills and expertise already, but there will be obvious challenges if the Bill prescribes new requirements that cannot be supported by existing teams.
2. The amendment introducing requirements for **neighbour notification of listed buildings applications** was considered to be high impact and potentially very costly for island authorities; with doubts about any added value, either through duplicating existing requirements or for applications being solely for internal works. Whilst this issue is arguably not specific to the islands, it was noted that the burden could be disproportionate in some areas given the high number of listed buildings on Orkney, for example. There were similar concerns about the costs arising from **requirements for advertising of S75 planning obligations**; noting people who had engaged in the application were already being informed.
3. Whilst the intentions of amendments on **rural resettlement** were understood, the view was that a more flexible planning system is the most effective solution to this policy objective.
4. Finally, very significant concerns were raised about the amendments to **regulate short term lets** through requiring planning applications across the board. This was considered to be potentially resource intensive and difficult, if not impossible, to monitor and enforce for the island authorities. There are questions of how this would relate to homes for offshore workers, for example, which are periodically occupied, or those who may stay on the main island for work and let out their home on a smaller island. There are significant differences and varying needs even within the geographical area of a single authority). Some islands may benefit from regulation where there is a

shortage of housing available. However, island communities are diverse, and in other areas housing availability is not an issue. As a result, the authorities emphasised that scope for some flexibility or local variation, rather than a blanket requirement to obtain planning permission, would be beneficial.

Conclusion

The Scottish Government is grateful to the authorities involved for sharing their views on island-specific issues arising from the Planning Bill. The issues raised have helped to inform our approach to Stage 3 of the Bill and the associated Scottish Government amendments. Continuing liaison on island community planning matters will be invaluable as we move beyond the Bill towards the preparation of National Planning Framework 4.