

# **Consultation on Provisions for a Future Islands Bill**

**September 2015**

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## Ministerial Foreword



As Scotland's first Government Minister with specific responsibility for the islands, it gives me great pleasure to launch this consultation which seeks the views of island communities and other interested stakeholders on potential measures that may be included within a future Islands Bill.

Scotland's islands have proud traditions, with rich and vibrant cultures. They are wonderful places to live, work, study and visit, and contribute so much to the fabric of Scotland as a nation. From Harris Tweed in the Western Isles to the famous Whisky distilleries in Islay, Scotland's islands are renowned across the world.

Over the last two years the Scottish Government has formed a positive partnership with our island councils to address some of the challenges our island communities face. The launch of the 'Our Islands Our Future' campaign in 2013 and the subsequent establishment of the Island Areas Ministerial Working Group brought these challenges to the fore. The publication of the Scottish Government's 'Empowering Scotland's Island Communities' prospectus in June 2014 sought to set out the most comprehensive package ever put forward by any Government for empowering Scotland's islands and confirmed our commitment to the principle of subsidiarity and local decision making.

There can be no doubt of the Scottish Government's on-going commitment to Scotland's Islands. At the very heart of her first Programme for Government statement, the First Minister pledged to re-convene the Island Areas Ministerial Working Group to implement as many of the commitments from the *'Empowering Scotland's Island Communities'* prospectus as possible within the existing powers of the Scottish Parliament, and to consult on potential measures for inclusion in a future Islands Bill. This work is now being taken forward through the Ministerial Working Group where good progress is being made in delivering on many of the commitments we have made to our island communities. We do however recognise there are still challenges to face around remoteness of location; transport connections; digital connectivity; fuel poverty; and declining populations, and we are working hard to tackle these issues in partnership.

Over the summer I had the opportunity to visit a number of island communities and hear first-hand from islanders about these challenges, but also about the opportunities of island life. I therefore see the launch of today's consultation as the next step in helping inform the Government's thinking about what additional measures may be needed to help shape a more prosperous and fairer future for our island communities. The Scottish Government is keen to hear the views of island communities and other interested stakeholders, and recognise there will be differing opinions. This consultation is therefore an ideal opportunity for ideas to be shared before any decisions are made on what future legislation might look like. I very much look forward to hearing your views.

**Derek Mackay, MSP**  
Minister for Transport and Islands

# Part One – Background and context

## Aim of Consultation

The aim of this consultation is to seek the views of interested stakeholders on plans for more power and protection for Scotland's islands. These views will 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.

## Our Islands Our Future Campaign

The *Our Islands Our Future* campaign was launched by Orkney and Shetland Islands Councils and Comhairle nan Eilean Siar in 2013, setting out their vision for a stronger future for Scotland's Island communities in the context of the constitutional debate around the Independence Referendum of 2014. The Councils called upon the Scottish and UK Governments to commit whatever the outcome of the Referendum, to ensuring that the needs and status of island areas were clearly recognised in the changed nature of the governance of Scotland.

In particular, the Councils sought additional powers and resources to give them a greater ability to shape their own destinies. This included:

- Control and management of the sea bed 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 the 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.

## Lerwick Declaration

Responding to the Islands campaign the former First Minister, Alex Salmond stated in July 2013, in the 'Lerwick Declaration' that the Scottish Government believed that the people who live and work in Scotland are best placed to make decisions about their future – the essence of self-determination and that therefore the Scottish Government supported the principle of subsidiarity and local decision making.

## **Island Areas Ministerial Working Group**

Following the Lerwick Declaration, the Island Areas Ministerial Working Group was established. The Group was chaired by Derek Mackay MSP, then Minister for Local Government and Planning and other members included Paul Wheelhouse, Minister for Environment and Climate Change, the Leaders and Chief Executives of the three Island Councils. The group met a total of 6 times between August 2013 and June 2014 and discussed a range of issues, including further devolution of the functions of the Crown Estate, Social & Economic matters, Energy, Renewables, Transport and Governance issues.

## **Empowering Scotland's Island Communities Prospectus**

The conclusion of the Ministerial group led to the publication of the Scottish Government's prospectus for the Islands, '[Empowering Scotland's Island Communities](#)', in June 2014, which was recognised as a very significant step towards realising the ambitions of the campaign by the leaders of the 3 Island Councils. This was the most comprehensive package for empowering Scotland's island communities put forward by any Government and re-affirmed the Scottish Government's commitment to subsidiarity.

## **Re-establishment of Ministerial Working Group & Commitment to Islands Bill**

In November 2014, Derek Mackay MSP was appointed as Minister for Transport and Islands fulfilling a commitment in the '*Empowering Scotland's Island Communities*' prospectus to provide a focus for Island issues and a voice for all 93 of Scotland's island communities at the heart of the Scottish Government. Following this appointment, the First Minister, Nicola Sturgeon announced as part of her 2014-15 Programme for Government that the Islands Area Ministerial Working Group would be re-convened and the Government would consult on what further measures might be included in a future Islands Bill.

The Ministerial Working Group re-convened in February 2015 and is tasked with taking forward the implementation of as many of the recommendations set out in the Government's Islands prospectus within the powers of the Scottish Parliament. The Group will also oversee plans for the Islands Bill consultation.

## Part two: Island-Proofing

One of the key proposals to emerge from the *'Empowering Scotland's Island Communities'* prospectus was the commitment of the Scottish Government to look at the concept of placing a duty within a future Islands Bill on Scottish Ministers and other relevant public bodies to 'island-proof' their functions and decisions.

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. Through the *'Empowering Scotland's Island Communities'* prospectus, the Scottish Government committed to this principle, and to consulting on its inclusion within a future Islands Bill to formalise the approach in law. 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.

The Scottish Government also committed to liaising with the Scottish Parliament to consider if amendments to the Parliament's Standing Orders were required to reinforce island-proofing within the Parliament's procedures, especially its legislative procedures. It is however acknowledged that the Standing Orders of the Scottish Parliament (Chapter 9: Public Bill Procedures, Rule 9.3 on Accompanying Documents at Paragraph 3.A) already state that a Government Bill shall also be accompanied by a Policy Memorandum which sets out:

- a) the policy objectives of the Bill;
- b) whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the bill was adopted;
- c) the consultation, if any, which was undertaken on those objectives and the ways of meeting them or on the details of the bill and a summary of the outcome of that consultation; and
- d) an assessment of the effects, if any, of the bill on equal opportunities, human rights, **island communities**, local government, sustainable development.

Alongside the commitment to look at this concept the Scottish Government plans to take steps to strengthen its internal mechanisms for how it island-proofs the development of policies and legislation. This will ensure that the Scottish Government will, where relevant, be able to provide a more robust analysis of the impact on island communities in its policy memorandum to Bills in fulfilment of the existing Standing Orders requirement. The Scottish Government in dialogue with the Scottish Parliament also plans to set out what steps it is taking to improve its approach to island-proofing both in terms of legislation and policy development, inviting in turn the Parliament to decide how it may wish to scrutinise the delivery of that.

Island-proofing could also provide a framework to take account of the recommendation of the 1984 Committee of Enquiry and 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 Island Areas, where there is a reason to do so. The Scottish Parliament already has the power to vary legislation by geographical area. The process of island-proofing would provide an opportunity to consider, on a case-by-case basis, whether this might apply to particular pieces of legislation.

### **Island-Proofing and Other Public Bodies**

Whilst the Scottish Government is keen to lead the way in island-proofing future legislation and policy commitments, it's recognised that certain other public bodies also need to take account of the specific needs and circumstances of island communities when carrying out their the functions and duties. In that regard, as part of the plans put forward in Part 4 of this consultation paper, the Scottish Government proposes to seek the views of stakeholders as to whether it should have the powers to issue statutory guidance to relevant public bodies concerning island-proofing.

### **Questions**

- (1)** Is the concept of 'Island-Proofing' something the Scottish Government should consider placing in legislation through the proposed Islands Bill? Yes/No. Please explain the reasons for your answer.
- (2)** If you answered 'Yes' to question 1, do you agree that Scottish Ministers should have the power to issue statutory guidance to other relevant public bodies related to Island-Proofing which they would be required to adhere to in exercising their functions and duties. Yes/No?
- (3)** If you answered 'Yes' to question 2, please state which public bodies, and what specific decisions this statutory guidance you think this should relate to?
- (4)** Are there any other areas that you feel the policy of Island-Proofing should cover?

## Part three: Empowering Island Communities

The '*Empowering Scotland's Island Communities*' prospectus and the commitments it contained made clear the Scottish Government's support for the principles of subsidiarity, and to looking at more powers for our islands. This support is further emphasised by the passing into law in June 2015 of the Community Empowerment (Scotland) Act, which will enable communities to be more involved in local decision-making.

The Scottish Government is keen to work with all partners to make our islands stronger and let them flourish, and to ensure that they have the right powers and functions to fit these unique parts of Scotland. This needs however to be set in the context of what powers our Islands Councils (and Councils with responsibilities for Islands) already have. This section of the consultation therefore seeks views on what further autonomy for our islands may look like.

### Scottish Local Government - Background

Up until the early part of the 20<sup>th</sup> century, local government in Scotland consisted largely of Royal Burghs, small towns and villages that organised basic services within communities. Scottish local government was first reorganised in 1929, when a complex structure consisting of five kinds of local government area was established.

It remained unchanged until 1975, following the report of the Wheatley Commission. The Commission's proposals were reflected in the [Local Government \(Scotland\) Act 1973](#). Post 1975, Scottish local government became a two-tier system, consisting of 9 Regional Councils, 53 District Councils and 3 all-purpose island councils (Western Isles, Shetland and Orkney).

Today's Scottish local government structure was the result of the 1996 reorganisation, the legislative basis for which was [The Local Government etc. \(Scotland\) Act 1994](#). The 1996 reorganisation resulted in the 9 regions and 53 districts being abolished, although the 3 island councils remained geographically unchanged. The district councils and regional councils were replaced with 29 single tier (or unitary) bodies to provide a more economic, cohesive, accountable and effective system.

### What Scottish Local Government Does

Scotland's 32 Local Authorities are responsible for the provision of a range of public services. Their powers are conferred by statute and include:

- **mandatory powers** - such as providing primary and secondary education; social work services; roads and transport; and waste management;
- **permissive powers** such as economic development, recreation services; and
- **regulatory powers** - Local Authorities provide regulatory services such as planning, trading standards and environmental health and issue licences for taxis and public events. Planning includes, since 2007, a regulatory role for marine aquaculture developments.



In addition [The Local Government in Scotland Act 2003](#) gave a statutory basis to partnership working between all agencies (such as health boards, benefits agencies, further and higher education institutions) responsible for public service delivery in an area. This partnership approach is called [Community Planning](#). Scottish Local Authorities are responsible for initiating, facilitating and maintaining Community Planning.

## **The Zetland and Orkney County Council Acts 1974**

Alongside the core legislation governing Scottish Local Authorities, in 1974 the UK Parliament passed The Zetland and Orkney County Council Acts. These Acts provided certain regulatory powers and placed duties of conservancy on each Council, over the seas around their coast lines. These powers which, on the whole remain with each Council to this day, allowed the Councils to exercise development control on the advent of the oil era over much of the territorial sea around their coast lines (for Shetland then 3 miles, now 12 miles; and for Orkney around Scapa Flow and various harbour areas); granted certain financial powers to borrow, invest and participate in business; and in the case of Shetland, powers of compulsory purchase relating to Sullom Voe.

A commitment was given in the *'Empowering Scotland's Island Communities'* prospectus that the Scottish Government would not seek to legislate to diminish these powers, and would progress as required any proposals from Comhairle nan Eilean Siar regarding which provisions from the 1974 Acts would also be relevant and appropriate for the Western Isles to have.

## **Questions**

**(5)** Do you agree that the current powers Island Councils, and Councils with Island responsibilities presently have are sufficient to deliver positive outcomes for their local island communities? Yes/ No.

**(6)** If you answered 'No' to question 5, please outline what additional powers you feel they require to benefit or better protect the island communities they serve, and explain the reasons for your answer.

**(7)** Do you feel there is a requirement to make any additions to the existing Zetland and Orkney County Council Acts of 1974? Yes/No. If 'Yes' please state what additions should be made and give the reasons for your answer.

**(8)** Should any of the powers currently set out in the Zetland and Orkney County Council Acts of 1974 be extended to the Western Isles and other relevant Councils? Yes/No. If 'Yes' please explain which powers and give the reasons for your answer.

## Part four: National Islands Plan

One of the proposals for enshrining within a future Islands Act is the possibility of a duty for all future Scottish Governments to prepare a 'National Islands Plan', which would set out an on-going range of commitments across all policy areas of Government to support, promote and empower our Island communities to build a wealthier and fairer future for themselves.

Similar in nature to the Gaelic Language (Scotland) Act 2005, and the British Sign Language (Scotland) Bill, this proposal would see provision within a future Islands Bill for a duty to be placed on Scottish Ministers to publish a 'National Islands Plan' as set out above. The lifespan of the plan would be determined through consultation but could be similar in nature to the duty placed on Scottish Ministers to approve a National Gaelic Language Plan every 5 years, or alternatively it could cover a shorter period e.g. 3 years. Linked to this duty, it would also be proposed that Ministers would have the ability to issue statutory guidance on island-proofing, which relevant public bodies would require to have regard to in connection with the exercising of their functions and duties. These provisions are designed to ensure that the public sector in Scotland plays its part in creating a sustainable future for Scotland's Island communities.

The draft 'National Islands Plan' would be subject to parliamentary and public scrutiny as part of its development, and Scottish Ministers could also be required to report annually to the Scottish Parliament on progress with the plan.

### **Questions**

**(9)** Do you think the Scottish Government should introduce a 'National Islands Plan'? Yes/ No. Please explain the reasons for your answer.

**(10)** Are there any specific areas you feel the plan should cover and report on?

**(11)** If such a plan was introduced, what in your view would be an appropriate life span for the plan – e.g. 3 years/5 years/other?

## **Part five: Constituency Protection for Na h-Eileanan an Iar**

Under Schedule 1 to the Scotland Act 1998 the two Scottish parliamentary constituencies for Orkney and Shetland have statutory protection under law. The Na h-Eileanan an Iar Scottish parliamentary constituency does not have this statutory protection. Under Schedule 2 to the Parliamentary Constituencies Act 1986 the UK parliamentary constituency for Orkney and Shetland, and the parliamentary constituency for Na h-Eileanan an Iar also have statutory protection.

One of the commitments therefore set out in the Scottish Government's prospectus '*Empowering Scotland's Island Communities*' published in June 2014 was that statutory protection should also be extended to the Na h-Eileanan an Iar Scottish Parliamentary constituency boundary as the only other constituency composed entirely of islands.

Under the terms of the current Scotland Bill 2015, which is going through its parliamentary processes at both Westminster and in the Scottish Parliament, the powers to provide statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency would devolve to the Scottish Parliament. It is therefore proposed that a provision of a future Islands Bill would be to put in place statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency.

### **Questions**

**(12)** Do you agree that statutory protection should be given to the Na h-Eileanan an Iar Scottish parliamentary constituency? Yes/No. Please explain the reasons for your answer.

## **Part six: Local Government Electoral Wards – populated Islands**

Under section 1 of the Local Governance (Scotland) Act 2004 each electoral ward in Scotland has to return 3 or 4 councillors. When designing wards, the Local Government Boundary Commission for Scotland (LGBCS) is required to apply rules in Schedule 6 to the Local Government (Scotland) Act 1973 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.

Although the LGBCS can depart from the rule about the ratio where there are special geographical considerations, the combination of these 2 requirements means that most populated islands have to be placed in an electoral ward which also contains a significant proportion, and often a majority, of mainland population. This has led to concerns amongst some island communities that their distinctive interests are not represented in the council's discussions, and that the island community may not have a councillor among its residents.

There is scope to address this issue if the 2004 Act were amended to give the Local Government Boundary Commission for Scotland the power to allow for wards covering populated islands to return 2 councillors, or even 1 councillor. The Scottish Government is therefore keen to hear views on the merits of this possible change. It should be noted however, that if a change was made it would not affect the current LGBCS 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.

We do not propose any change to the current system of a single transferrable vote for local government elections.

**(13)** Should the Scottish Government consider amending the Local Governance (Scotland) Act 2004 to allow the LGBCS the power to make an exception to the usual 3 or 4 member ward rule for use with respect to populated islands? Yes/No. Please explain the reasons for your answer.

## **Part seven: Other General Issues not covered elsewhere**

**(14)** Please provide details of any additional issues, not addressed in your other responses, that you think should be considered in relation to the introduction of a future Islands Bill and its potential provisions.

## Part eight: About this consultation

### The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises.

If you wish to respond, you can do so online, using the Scottish Government's consultation hub, which can be accessed at <https://consult.scotland.gov.uk>

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** which forms part of the consultation questionnaire enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

## Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available on <http://consult.scotland.gov.uk> and on the Scottish Government consultation web pages. If you respond using <http://consult.scotland.gov.uk>, a copy of your response can be emailed to you.

## What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Darren Dickson, Local Government Division and Analytical Services Division, Address - Area 3-J (North), Victoria Quay, Edinburgh, EH6 6QQ, e-mail: [Darren.Dickson@gov.scot](mailto:Darren.Dickson@gov.scot)

# Consultation on Provisions for a Future Islands Bill

## RESPONDENT INFORMATION FORM

**Please note** that this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name / Organisation

Title Mr  Ms  Mrs  Miss  Dr  **Please tick as appropriate**

Surname

Forename

Organisation Name

### 2. Postal Address

Postcode	Phone	Email

### 3. Permissions

I am responding as an...

Individual

/

Organisation or Group

**Please tick as appropriate**

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**

Yes  No

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

**Please tick as appropriate**

Yes  No



**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response and name available, but not my address

**or**

Yes, make my response available, but not my name and address

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

**Yes**

**No**

**Question 1**

Is the concept of ‘Island-Proofing’ something the Scottish Government should consider placing in legislation through the proposed Islands Bill?

Yes  No

Please explain the reasons for your answer.

**Question 2**

If you answered ‘Yes’ to question 1, do you agree that Scottish Ministers should have the power to issue statutory guidance to other relevant public bodies related to Island-Proofing which they would be required to adhere to in exercising their functions and duties.

Yes  No

**Question 3**

If you answered ‘Yes’ to question 2, please state which public bodies, and what specific decisions this statutory guidance you think this should relate to?

**Question 4**

Are there any other areas that you feel the policy of Island-Proofing should cover?

**Question 5**

Do you agree that the current powers Island Councils, and Councils with Island responsibilities presently have are sufficient to deliver positive outcomes for their local island communities?

Yes  No

**Question 6**

If you answered ‘No’ to question 5, please outline what additional powers you feel they require to benefit or better protect the island communities they serve, and explain the reasons for your answer.

**Question 7**

Do you feel there is a requirement to make any additions to the existing Zetland and Orkney County Council Acts of 1974?

Yes  No

If 'Yes' please state what additions should be made and give the reasons for your answer.

**Question 8**

Should any of the powers currently set out in the Zetland and Orkney County Council Acts of 1974 be extended to the Western Isles and other relevant Councils?

Yes  No

If 'Yes' please explain which powers and give the reasons for your answer.

**Question 9**

Do you think the Scottish Government should introduce a 'National Islands Plan'?

Yes  No

Please explain the reasons for your answer.

**Question 10**

Are there any specific areas you feel the plan should cover and report on?

**Question 11**

If such a plan was introduced, what in your view would be an appropriate life span for the plan – e.g. 3 years/5 years/other?

**Question 12**

Do you agree that statutory protection should be given to the Na h-Eileanan an Iar Scottish parliamentary constituency?

Yes  No

Please explain the reasons for your answer.

**Question 13**

Should the Scottish Government consider amending the Local Governance (Scotland) Act 2004 to allow the LGBCS the power to make an exception to the usual 3 or 4 member ward rule for use with respect to populated islands?

Yes  No

Please explain the reasons for your answer.

**Question 14**

Please provide details of any additional issues, not addressed in your other responses, that you think should be considered in relation to the introduction of a future Islands Bill and its potential provisions.



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