

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 1, page 1, line 8

leave out section 1 and insert:

<(1) In this Act “island” means a naturally formed area of land which is surrounded on all sides by the sea (ignoring artificial structures such as bridges, and natural features) at the mean high water mark.

(2) In this Act, “inhabited island” means an island upon which at least one person is resident.>

Effect

The amendment would provide greater clarity to the definitions of ‘island’ and ‘inhabited island’ and ensure that the definitions match the objectives of the Bill.

Reason

The current definition of ‘island’ is not clear. The definition does not take account of circumstances such as when an area of land is surrounded on all sides by the sea only at high tide and a natural causeway connects it to the mainland at low tide. In addition, we note that the level of high tide is variable. The use of ‘mean high water mark’ ensures a degree of consistency.

The definition of ‘inhabited island’ as contained within the Bill as introduced relies on the concept of an island being “permanently inhabited”. This is not a concept which is recognised in Scots law and is likely to prove confusing and impractical. Such a concept suggests that an individual must inhabit an island at all times. It is unlikely that this is what is envisaged in the terms of the Bill. The definition could be a particularly pertinent issue on islands with only a small number of residents.

The concept of “residence” is currently used on a widespread basis within legislation. This concept removes the issues which may arise by use of the test “permanently inhabited”. It is generally recognised by the law that the word ‘residence’ is to be given its ordinary

meaning.<sup>1</sup> It has also been held that an individual may have more than one residence.<sup>2</sup> We therefore consider that this definition may be capable of covering seasonal occupation of an island which is likely to be in accordance with the principles of the Bill.

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<sup>1</sup> For example, see *Williamson v Williamson* 2010 S.L.T. (Sh Ct) 41; *Fox v. Stirk and Bristol Electoral Registration Officer* [1970] 2 QB 463.

<sup>2</sup> As per Lord Denning in *Fox v. Stirk and Bristol Electoral Registration Officer* [1970] 2 QB 463 at 475.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 2, page 1, line 17	leave out <permanently inhabit> and insert <are resident on>
In section 2, page 1, line 18	leave out <(whether or not the same island)>

Effect

The amendment would provide greater clarity to the definition of ‘island community’ and ensure that the definition matches the objectives of the Bill.

Reason

The concept of “permanent inhabitation” is not a concept recognised in Scots law. It is likely to prove confusing and impractical. Such a concept suggests that an individual must inhabit an island at all times. It is unlikely that this is what is envisaged in the terms of the Bill. The definition could be a particularly pertinent issue on islands with only a small number of residents.

The concept of “residence” is currently used on a widespread basis within legislation. This concept removes the issues which may arise by use of the test “permanently inhabited”. It is generally recognised by the law that the word ‘residence’ is to be given its ordinary meaning.<sup>3</sup> It has also been held that an individual may have more than one residence.<sup>4</sup> The expansion of the definition of island community to include those who are resident on an island may allow for those who have seasonal residence to be included in an island community. We consider that this may have significance in terms of the European Convention on Human Rights under which it could be suggested that those who reside on an island for only part of the year have lesser rights than those who reside there throughout the year.

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<sup>3</sup> For example, see *Williamson v Williamson* 2010 S.L.T. (Sh Ct) 41; *Fox v. Stirk and Bristol Electoral Registration Officer* [1970] 2 QB 463.

<sup>4</sup> As per Lord Denning in *Fox v. Stirk and Bristol Electoral Registration Officer* [1970] 2 QB 463 at 475.

It may not be appropriate for communities to be formed of individuals who are resident on different islands. Although such individuals may have common interests, identity or geography, it cannot be said with certainty that they will share each of these factors, nor is that required by the Bill. The values and needs of such individuals may not be aligned. Therefore, it may not be appropriate for an island community to be formed in such circumstances.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 3, page 2, line 7	leave out <improving outcomes> and insert <benefit>
In section 3, page 2, line 8	leave out <that result from, or are contributed to>

Effect

The amendment has the effect of clarifying the purpose and nature of the national islands plan.

Reason

The term “improving outcomes” is not generally defined within the law and could be viewed as a fairly subjective concept. The concept of benefit is used in other legislation, for example under the Charities and Trustee Investment (Scotland) Act 2005, and referred to in the Scottish Crown Estate Bill. There is merit in consistent use of language across legislation.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 4, page 2, line 14

add at end –

<( ) those persons with an interest in land  
forming part of an island community, and>

Effect

To ensure that those with an interest in land (either by way of ownership or another real right) would be entitled to be consulted in the preparation of the national islands plan.

Reason

Those with an interest in land should be entitled to be consulted during the preparation of the national islands plan. There may be circumstances where individuals have an interest in land which forms part of an island community but these individuals may not fall within the other categories that require to be consulted.

Protocol 1, Article 1 of the European Convention on Human Rights provides that:

“(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions...”

It is therefore of constitutional importance that individuals with an interest in land are entitled to be consulted on matters which may affect their property. This amendment ensures there is no uncertainty as to their right to be consulted.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 5, page 2, line 34

leave out <the outcomes identified in the national islands plan have improved> and insert <island communities have benefited from the carrying out of functions of a public nature>

Effect

This is a consequential amendment due to our proposed amendment to section 3(2). It would have the effect of bringing the requirements for certain information to be included by Ministers within their report on the national islands plan in line with our proposed amendment to the purpose and nature of the national islands plan.

Reason

This is a consequential amendment.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 7, page 3, line 28

after <Ministers> insert <after consulting with  
such parties as they consider appropriate>

Effect

The amendment would have the effect of incorporating a consultation requirement for Scottish Ministers prior to them making amendments to the list of authorities who must have regard to island communities in carrying out its functions.

Reason

It is appropriate that the list of authorities required to have regard to island communities in carrying out its functions can be amended by Scottish Ministers. It is important that Scottish Ministers be required to consult before amending the list of authorities in order to be held accountable to the Scottish Parliament. In particular, it may be appropriate for particular bodies that are being considered for additional to, or removal from, the list to be consulted.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In section 10, page 4, line 23

add at end–

<( ) and those persons with an interest in land forming part of an island community>

Effect

To ensure that those with an interest in land (either ownership or another right) would be entitled to be consulted on guidance issued relevant to section 7 of the Bill.

Reason

Those with an interest in land should be entitled to be consulted during the preparation of guidance for relevant authorities relating to their duty to have regard to island communities in carrying out their functions.

Individuals with an interest in land which forms part of an island community may not fall within the other categories that require to be consulted under section 10. The guidance may affect their interests.

Protocol 1, Article 1 of the European Convention on Human Rights provides that:

“(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions...”

It is therefore of constitutional importance that individuals with an interest in land are entitled to be consulted on matters which may affect their property. This amendment ensures there is no uncertainty as to their right to be consulted.

**ISLANDS (SCOTLAND) BILL**  
**AMENDMENT TO BE MOVED AT STAGE 2**

In the Schedule, page 12, line 4	add at end –  <( ) Crown Office and Procurator Fiscal Service>
In the Schedule, page 12, line 35	add at end –  <( ) The Office of the Scottish Charity Regulator>
In the Schedule, page 12, line 35	add at end –  <( ) The Scottish Fiscal Commission>

Effect

To expand the list of relevant authorities that must have regard to island communities in carrying out their functions, in line with section 7 of the Bill.

Reason

These amendments add additional authorities who must have regard to island communities in carrying out their functions, in line with section 7 of the Bill. These authorities are included in the list in part 2 of Schedule 1 of the Freedom of Information (Scotland) Act 2002.<sup>5</sup> Although the Bill gives Scottish Ministers the power to amend the list contained in the Schedule, it is important that the list is as wide-ranging as is necessary and appropriate in the first instance.

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<sup>5</sup> <http://www.legislation.gov.uk/asp/2002/13/schedule/1>