

**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 spring tide 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 spring tide mark’ ensures a degree of consistency, and accords with our proposed amendment to Section 17 and to the definitions used in Part 1 of the Marine (Scotland) Act 2010.

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**  
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In section 17, page 7, line 27

Leave out <low water mark of the ordinary spring tide> and insert <mean high water spring tide mark>

Effect

The amendment has the effect of amending the definition of “Scottish island marine area”.

Reason

The amendment ensures consistency in use of tide mark with our proposed amendment to section 1 of the Bill and to existing definitions in respect of marine licensing found within Part 1 of the Marine (Scotland) Act 2010.