



Law Society  
of Scotland

# Consultation Response

## Proposed Remote Rural Communities (Scotland) Bill

January 2020



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Rural Affairs Sub-committee welcomes the opportunity to consider and respond to Gail Ross MSP's consultation: *Proposed Remote Rural Communities (Scotland) Bill*<sup>1</sup>. We have the following comments to put forward for consideration.

## General remarks

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During the passage of the Islands (Scotland) Act 2018, we noted that the Bill covered a disparate set of issues and that many of the issues identified in the policy memorandum – “geographic remoteness, declining populations, transport and digital connections” – were also relevant to rural communities more generally.

It is important that there is clarity, certainty and consistency in the law. It is therefore crucial that there is a clear definition of remote rural communities in the context of this proposed Bill. This definition should be consistent with the definition of island communities in the 2018 Act. The consultation document notes that rural communities are already monitored by way of the Urban Rural Classifications and therefore we consider that it would be appropriate for this to form the basis on how remote rural communities are defined within this proposed Bill.

<sup>1</sup> <https://www.parliament.scot/parliamentarybusiness/Bills/113252.aspx>

## Consultation questions

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### 1. Which of the following best expresses your view of legislating to enhance the consideration given to remote rural mainland communities by public bodies in Scotland?

As we note above, we recognised during the passage of the Islands (Scotland) Bill Act 2018 that many of the same or similar issues are relevant to remote rural communities than to the islands. It is appropriate that the needs of remote rural communities be given consideration by public bodies. However, it must be recognised that legislation can only go so far in achieving the desired outcomes and underlying changes in approach may be required.

### 2. What do you think would be the main practical advantages and disadvantages of the proposed Bill?

No comment.

### 3. Which of the following best expresses your view of placing the concept of Remote Rural Proofing into legislation?

We consider that it would be appropriate for any such provisions to mirror those within the Islands (Scotland) Act 2018. This will help to ensure that there is consistency across the statute book. As such, it would be appropriate for any remote rural proofing to apply to broadly the same relevant authorities as those listed in the Islands (Scotland) Act 2018.

We suggest that consideration be given as to the consequences of a failure to comply with the legislation. A suitable mechanism for enforcing the legislation will help to ensure accountability.

Access to justice is a key concern for us. As noted in our response<sup>2</sup> to the Independent Strategic Legal Aid review, we noted that independently commissioned research had identified a risk that people in rural areas who were eligible for legal aid would not be able to find solicitors to provide advice, including in cases where a person is detained in custody and the requirement for advice is particularly urgent. There is also often the need for specialist advice or to vulnerable groups, or both, for instance, in cases of domestic abuse. How best to provide services to people in these situations is a challenge shared between island and rural communities. Technology may assist, though often face-to-face help is required, and some more rural

<sup>2</sup> <https://www.lawscot.org.uk/media/1179917/final-law-society-of-scotland-response-to-independent-strategic-legal-aid-review-call-for-evidence-aug-2017-corrected-.pdf>

areas lack the infrastructure to support such delivery. These issues are not unique to legal aid, but also other aspects of the justice system, such as available and accessible mediation services in more rural communities.

We have cautioned previously that if steps are not taken to remedy these challenges, it could result in a two-tier justice system. If the duty to have regard to remote rural communities placed upon authorities such as the Scottish Courts and Tribunals Services, Scottish Legal Aid Board and Children's Hearings Scotland leads to improved access to justice in such areas, this would be welcomed.

**4. Which of the following best expresses your view of giving Scottish Ministers power to issue statutory guidance to other relevant public bodies related to Remote Rural Proofing which they would be required to adhere to in exercising their functions and duties?**

We recognise that a benefit of issuing such guidance is that it would help to ensure that there is consistency in approach across public bodies.

**5. If Scottish Ministers had such a power, which public bodies should it apply to, and in relation to which of their functions and duties?**

We suggest that the list of public bodies should align with those detailed within the schedule to the Islands (Scotland) Act 2018 in order to ensure consistency. Provision should be made within the Bill for regulation making powers to allow the list of public bodies to be amended by adding, varying or removing entries.

**6. Do you agree that councils that serve remote rural areas currently have sufficient powers to deliver positive outcomes for their communities? Please give reasons for your response (and suggest any additional powers that you think these councils should have).**

We have no evidence to enable us to respond.

**7. Which of the following best expresses your view of requiring the Scottish Government to prepare a 'National Remote Rural Plan'?**

We do not take a view on the necessity or otherwise of creating a 'National Remote Rural Plan' plan *per se* as this is a political rather than a legal decision. However, during the passage of the Islands (Scotland) Act

2018, we noted that many of the issues identified in relation to island communities would also apply to other remote communities, including access to justice, access to services such as transport and financial services, and infrastructure.

If a 'National Remote Rural Plan' is to be introduced, it will be necessary for this to be aligned with other plans such as the National Planning Framework, Scotland's Marine Plan and the Land Use Strategy, National Islands Plan, and Local Development Plans. The interrelationship between the Remote Rural Plan and other plans should be made clear in the Bill.

## **8. How often should the plan be reviewed?**

We support a requirement to review the plan regularly. We note that a period of 5 years would ensure that the Bill is in line with the Islands (Scotland) Act 2018, but also recognise that a 10 year period would be in line with the review of Local Development Plans following the passage of the Planning (Scotland) Act 2019.

We consider it would be appropriate for the plan to be laid before the Scottish Parliament and any revised plan laid published. We would also welcome a requirement for Scottish Ministers to report annually to the Scottish Parliament on progress of the plan.

## **9. The Boundary Commission is normally required to ensure that all constituencies and wards contain similar populations, even if that results in rural constituencies and wards being much larger than urban ones. At present, the only exceptions are for a few island areas (e.g. Orkney, Shetland and the Western Isles must remain separate constituencies, despite their relatively small populations). Do you believe further exceptions should be made for mainland remote rural areas?**

The Parliamentary Voting System and Constituencies Act 2011 sets the number of UK constituencies at 600. There are currently 59 constituencies in Scotland and the number of the electorate differs by constituency. The Office for National Statistics<sup>3</sup> gives the average electorate across constituencies of about 67,200 in Scotland.

With the exceptions of Na h-Eileanan an Iar, Orkney and Shetland and the Isle of Wight, constituencies need to be within 5% of an electoral quota of 74,769. The UK electoral quota is the total electorate for the UK divided by 596 (600 hundred constituencies minus the 4 island constituencies). To be within the 5% margin of the electoral quota (which is the average electorate per mainland constituency) the electorate has to be no fewer than 71,031 and no more than 78,507. The geographical area of constituencies will be

<sup>3</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticsforuk/2017>

limited at 13,000 km<sup>2</sup>. Currently the only constituency with an area greater than 12,000 km<sup>2</sup> is Ross, Skye & Lochaber at 12,715 km<sup>2</sup>.

Schedule 2, Rule 5 of the Parliamentary Constituencies Act 1986 Act provides that subject to the principle of parity of electorate:

- 1) A Boundary Commission may take into account, if and to such extent as they think fit—
  - a) special geographical considerations, including in particular the size, shape and accessibility of a constituency;
  - b) local government boundaries as they exist on the most recent ordinary council-election day before the review date;
  - c) boundaries of existing constituencies;
  - d) any local ties that would be broken by changes in constituencies;
  - e) the inconveniences attendant on such changes.

The Boundary Commission for Scotland are responsible for keeping UK Parliament constituencies in Scotland under review and making recommendations to Ministers, as required by the Parliamentary Constituencies Act 1986 as amended by the 2011 Act. The Commission's September 2018 report contains its Final Recommendations following the 2018 Review of UK Parliament Constituencies which in its turn was the culmination of a consultation which began in 2016.

It seems unlikely that there will be another review outside the next statutory cycle which requires that the next review must be submitted by 1 October 2023. There will therefore be an opportunity to make submissions to the Boundary Commission in advance of that review.

The Local Government Boundary Commission for Scotland was established by the Local Government (Scotland) Act 1973. Since being passed, the Act has been amended by various pieces of legislation. Its duties and powers with respect to local government boundaries are detailed in Section 12 to 28 of the 1973 Act. The Commission is responsible for carrying out reviews of:

- a) the boundaries of local authority areas;
- b) electoral wards for local authorities; and
- c) constituencies and regions for the Scottish Parliament.

The Commission is an Advisory Non-departmental Public Body sponsored and wholly funded by the Scottish Government. It is an independent, non-political body created by the Local Government (Scotland) Act 1973.

Under the terms of section 8 of the Scotland Act 2016, responsibility for reviews of Scottish Parliament boundaries passed from the Boundary Commission for Scotland to the Local Government Boundary Commission for Scotland with effect from 18 May 2017.

The 1973 Act specifies that Scottish Ministers may direct the Commission on various matters. A Direction is currently in force directing the Commission not to undertake reviews under section 14(1) of the Act in the period to 31 May 2022. A Direction is currently in force directing the Commission not to undertake reviews under section 14(2) of the Act in the period to 30 September 2023 that would affect more than 500 electors.

The Islands (Scotland) Act 2018 introduced the use of one or two member wards where a ward containing an inhabited island, in addition to the current multi-member ward system. The Act requires the Commission to review the six Councils containing inhabited islands. The consultation for this review concluded on 2 December 2019. Recommendations are expected in 2020.

**10. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:**

- (a) Government and the public sector**
- (b) Businesses**
- (c) Individuals**

We have no evidence upon which to base a response.

**11. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?**

We have no evidence upon which to base a response.

**12. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, race, religion and belief, sex, sexual orientation?**

We have no evidence upon which to base a response.

**13. In what ways could any negative impact of the Bill on equality be minimised or avoided?**

We have no evidence upon which to base a response.

**14. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?**

We have no evidence upon which to base a response.

**For further information, please contact:**

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