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Dear Euan

ISLANDS (SCOTLAND) BILL

Thank you for the Delegated Powers and Law Reform Committee letter of 20 September 2017 to James Hynd. The Committee asked two questions and our responses are provided below.

“The Committee therefore asks the Scottish Government, in relation to section 7(3), why it has been considered appropriate not to extend the power to modifying an entry in the schedule, in addition to the power to add or remove an entry?”

We think that the approach taken in the Bill to add or remove an entry in the schedule is sufficient to ensure that the list of relevant authorities correctly identifies those persons, bodies or office-holders which must have regard to island communities in carrying out its functions.

Where a new person, body or office-holder comes into existence which requires to be added to the list in the schedule, an entry may be added. Where a relevant authority ceases to exist, the entry may be removed. Where a relevant authority has its name changed, the entry under the former name may be removed and the new name added to the list in the appropriate place.

We think that there was no need to take a power to vary the description of an entry in the schedule as it simply comprises a list of names. Whereas, in the Gender Representation on Public Boards (Scotland) Bill, the list in Schedule 1 is more complex as it names authorities and sets out excluded positions which are described, sometimes by reference to statute. Therefore, it could be possible that the name of the public authority could remain the same but that the legislation by virtue of which a position is excluded could be amended which would require a variation of the description.

“The Committee therefore asks the Scottish Government, in relation to the ancillary powers in section 21(1)(a) to add supplementary, incidental or consequential provisions in the regulations under either sections 7(3) or 18, for explanation why these powers are considered to be necessary or appropriate?”

In particular:

(a) why are these powers appropriate in addition to the powers to make ancillary provisions by regulations in section 22, and

(b) why is the power to add supplementary provision appropriate, in respect of both regulations under section 7(3) and section 18?”

The ancillary power in section 21(1) allows regulations under section 7(3) and 18(1) to include ancillary provision and to make different provision for different purposes.

In relation to question (a), while ancillary provision could be made through the standalone ancillary power in section 22, it was considered that the principal regulations should themselves carry this power, rather than rely on section 22, which may be used for another purpose. In particular, it was considered that such extension of the principal powers in sections 7(3) and 18(1) was appropriate given both are proposed to be subject to the affirmative procedure, in contrast to the ancillary power in section 22 which may in some circumstances be subject to the negative procedure.

On question (b), an ancillary provision was considered necessary to ensure that any unexpected issues which arise and which require further changes when the principal powers in sections 7(3) and 18(1) are exercised can be dealt with effectively. This would prevent the purpose of the Bill being inadvertently obstructed. For example, an issue may arise when considering a licensing scheme under section 18 and its interaction with the existing statute book. While section 7(3) is a more focussed power, an issue might arise in adding or removing a body or office-holder to the schedule, particularly if that body or office-holder has related statutory functions which require to be adjusted in the legislation governing that body or office-holder.

I hope this is helpful to the Committee and we are always willing to give consideration to changes that will improve the Bill. If there are any other questions please get in touch.

Your sincerely

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Islands Bill Team