
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 and come into force on 23 December 2020.

Interpretation

2. In these Regulations—

“the Act” means the Islands (Scotland) Act 2018,

“applicant” means—

- (a) an individual who is a resident of an island community at the time of the decision, or
- (b) a community controlled body, or
- (c) a relevant local authority,

“decision” means—

- (a) a published decision, or
- (b) the decision of the relevant authority following review of a policy, strategy or service (as the case may be)—
 - (i) not to prepare an island communities impact assessment for that policy, strategy or service (as the case may be), and
 - (ii) not to publish an explanation for not preparing an island communities impact assessment,

“community controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

- (a) a definition of the island community to which the body relates,
- (b) provision that the majority of the members of the body is to consist of members of that island community,
- (c) provision that the members of the body who consist of members of that island community have control of the body,
- (d) provision that membership of the body is open to any member of that island community,
- (e) a statement of the body’s aims and purposes, including a promotion for the benefit of that island community, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that island community,

“publication date” means—

- (a) the publication date of the island communities impact assessment, or
- (b) the publication date of the explanation by the relevant authority for not preparing an island communities impact assessment,

“published decision” means—

- (a) the published island communities impact assessment,
- (b) the published explanation by the relevant authority for not preparing an island communities impact assessment,

“relevant local authority” has the meaning given by section 21(2)(a) of the Act,

“review documents” means—

- (a) the application for review,
- (b) all documents accompanying the application for review in accordance with regulation 5(1)(b), and
- (c) all representations or comments received by the relevant authority by virtue of regulations 7(3) or 8(2).

“validation date” has the meaning given by regulation 6(6),

“working day” means every day except—

- (a) Saturday and Sunday,
- (b) 1 and 2 January, and
- (c) 25 and 26 December.

PART 2

Publication of Island Communities Impact Assessments

Publication of Island Communities Impact Assessments

3. An island communities impact assessment prepared by a relevant authority is to be published on a website of the relevant authority.

PART 3

Review of decisions of relevant authorities relating to island communities impact assessments: procedure

Grounds of review

4. An applicant may request a review of a decision where the applicant can demonstrate that the applicant has been or is likely to be directly affected by the policy, strategy or service which is the subject matter of that decision and—

- (a) the applicant disagrees with the published explanation of the relevant authority under section 8(4) of the Act for not preparing an island communities impact assessment,

- (b) the applicant considers that the relevant authority, in making its decision, has failed in its duty under section 8(3)(a) of the Act to describe the likely significantly different effect of the policy, strategy or service (as the case may be),
- (c) the applicant considers that the relevant authority, in making its decision, has failed in its duty under section 8(3)(b) of the Act to assess the extent to which the relevant authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it, or
- (d) the relevant authority has reviewed a policy, strategy or service (as the case may be) and has decided not to prepare an island communities impact assessment for that policy, strategy or service and has not published an explanation for not preparing an island communities impact assessment and the applicant considers that policy, strategy or service has an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the relevant authority exercises its functions.

Form and timing of application for review

5.—(1) An application for review under these Regulations must—

- (a) be made in the form specified in the schedule, and
- (b) include or be accompanied by any information specified in that schedule.

(2) An application for review made under regulation 4(a), (b) or (c) must be made to the relevant authority within the period of 3 months beginning with the publication date.

(3) An application for review made under regulation 4(d) may be made at any time after the decision is made.

Validation of application

6.—(1) Subject to paragraphs (2) and (7), a relevant authority must, within 10 working days following receipt of an application for review, send a written acknowledgement to the applicant informing the applicant of the website on which documents submitted in connection with the review will be published.

(2) Subject to paragraph (7), where the relevant authority receives an application for review and—

- (a) the application form is incomplete, or
- (b) documentation listed on the application form as being submitted with the application has not been submitted,

the relevant authority may, within 10 working days following receipt of the application, issue a notice to the applicant.

(3) A notice issued under paragraph (2) must, as the case may be, identify—

- (a) the information the applicant must provide in order to complete the application form,
- (b) the documentation listed on the application form which was not submitted by the applicant.

(4) The applicant must provide any information or documentation listed in a notice under paragraph (2) to the relevant authority within 10 working days following the second working day after the date the notice was issued.

(5) Where the relevant authority receives all of the information or documentation identified in a notice issued under paragraph (2) within the time limit specified in paragraph (4), the relevant authority must within 10 working days following the expiry of that time limit send a written

acknowledgement to the applicant in the same manner as an acknowledgement issued under paragraph (1).

(6) An application for review is taken to have been validated on the date on which the acknowledgement is issued under paragraph (1) or (5) (“the validation date”).

(7) A relevant authority may decline to consider an application for review—

- (a) which relates to a decision for which an application has already been received and validated in accordance with paragraph (6), or
- (b) where the relevant authority has issued a notice under paragraph (2) and the applicant has failed to submit all of the information or documentation required to comply with that notice within the time limit specified in paragraph (4).

(8) Where a relevant authority declines to consider an application under paragraph (7), the relevant authority must give notice in writing to the applicant confirming whether the application was declined under paragraph (7)(a) or (b).

Notification of Review

7.—(1) Within 7 working days following the validation date, the relevant authority must publish a notice with details of the review on the website of the relevant authority.

(2) A notice under paragraph (1) must—

- (a) state the decision to which the review relates,
- (b) state the grounds under regulation 4 on which the application is made,
- (c) provide details of where the application for review and any other documents submitted in connection with it may be accessed by the public, and
- (d) state that written representations may be made by any person to the relevant authority and include information as to how any representations may be made, by which date they must be made (being a date not less than 14 working days following the date of publication of the notice), that the written representations must include the name and contact details of the person making the written representations, and that a copy of the written representations will be sent to the applicant for comment.

(3) A person may within the period of 14 working days following the date on which the notice is published under paragraph (1) make written representations in respect of the review to the relevant authority.

(4) A person may, in addition to any representations made by virtue of paragraph (3), raise matters and submit further documents, materials or evidence only in accordance with a request made under regulation 12.

Opportunity for applicant to comment on representations

8.—(1) Within 10 working days following the date referred to in regulation 7(2)(d), the relevant authority must send a copy of any representations received under regulation 7(3) to the applicant and must inform the applicant how and by what date (being a date not less than 14 working days following the date on which such copy is sent under this paragraph) the applicant may make comments to the relevant authority on such representations.

(2) The applicant may, within the time limit specified by the relevant authority under paragraph (1), make comments in writing on such representations.

Publication of representations and comments

9.—(1) As soon as practicable following receipt, the relevant authority must make copies of-

- (a) any representations or comments received under regulations 7(3) or 8(2),
- (b) any additional material received under regulation 12(3), and
- (c) any comments received under regulation 12(4),

available for inspection on the website of the relevant authority, until such time as the relevant authority publish a decision notice in accordance with regulation 15.

(2) Any review documents published on the website of a relevant authority must not include the name, contact details and signature of the applicant or those who have made comments or representations.

(3) In addition to paragraph (2), a relevant authority may further redact information from the review documents prior to publication on the relevant authority's website to the extent they are, in the relevant authority's reasonable opinion, defamatory or obscene.

Determination without further procedure

10. Where the relevant authority considers that the review documents provide sufficient information to enable it to determine the review, it may determine the review without further procedure.

Further procedure

11.—(1) The relevant authority may determine at any stage of the review that further representations should be made or further information should be provided to enable the review to be determined.

(2) Where the relevant authority considers that further representations should be made or further information should be provided, regulation 12 applies.

(3) Notices given under regulation 12(1)—

- (a) may be given separately or combined into a single notice, and
- (b) must include an address to which any written communication may be sent.

Written submissions

12.—(1) Where the relevant authority has determined that further representations should be made or further information should be provided, by means of written submissions, the relevant authority may request such further representations or information and must do so by giving written notice to that effect to—

- (a) the applicant, and
- (b) any other person from whom the relevant authority wishes to receive further representations or information.

(2) The notice given under paragraph (1) must—

- (a) set out the matters on which such further representations or information is requested,
- (b) specify the date by which such further representations or information are to be received by the relevant authority, and
- (c) specify the name and address of any person to whom the notice is given.

(3) Any further representations made or information provided in response to a notice given under paragraph (1) (“additional material”) must be received by the relevant authority on or before the date specified for that purpose in the notice and a copy of that additional material must be sent to any other person to whom the notice was given to be received on or before that same date.

(4) Any person to whom a notice under paragraph (1) was given may send comments to the relevant authority in respect of the additional material to be received by the relevant authority on or before the date 10 working days following the date specified under paragraph (3) and must, when doing so, send a copy of such comments to any other person to whom the notice was given under paragraph (1).

(5) A copy of any additional material or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the notice given under paragraph (1).

New evidence

13.—(1) If, after the conclusion of any further procedure conducted by virtue of regulation 11, the relevant authority proposes to take into consideration any new evidence which is material to the determination of the review, the relevant authority must not reach a decision on the review without first affording the applicant and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation “relevant party” means any person to whom notice was sent under regulation 12(1)(b).

Time periods for determination

14.—(1) The relevant authority must, within the period mentioned in paragraph (2)—

- (a) issue a decision notice to the applicant,
- (b) issue a copy of the decision notice to any person who—
 - (i) made written representations under regulation 7(3), or
 - (ii) who received notice under regulation 12(1)(b), and
- (c) make a copy of the decision notice available for inspection on the website of the relevant authority.

(2) The period referred to in paragraph (1) is 6 months beginning on the validation date.

Decision Notice

15. The decision notice must—

- (a) describe the decision that was the subject of the review,
- (b) state the relevant authority’s determination of the review and the reasons for that determination,
- (c) state—
 - (i) the further action under regulation 16, if any, that the relevant authority will take and the time period within which that further action will be taken, or
 - (ii) that no further action under regulation 16 will be taken.

Further action

16. The further action that may be taken by a relevant authority is—

- (a) an island community impact assessment being carried out where one has not previously been done,
- (b) variations being made to part (or parts) of an island community impact assessment, or

- (c) a new island community impact assessment being carried out and substituted where one has previously been done.

PART 4

General

Electronic Communications

17.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communication and any requirement in these Regulations that any document is to be in writing is fulfilled in that case.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive the document electronically, and
- (b) the document when transmitted by electronic communication will be—
 - (i) capable of being accessed by the recipient,
 - (ii) legible in all material respects, and
 - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communication is to be taken to have agreed—

- (a) to the use of such communication for all purposes relating to the review which are capable of being carried out electronically, and
- (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communication or of revocation of agreement under paragraph (4) takes effect on the later of—

- (a) the date specified by the person in the notice, or
- (b) the expiry of the period of 5 working days beginning with the date on which the notice is sent.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communication or storage,

“document” includes any notice, consent, agreement, decision, representation, statement, report or other information or communication,

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(1),

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form, and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

(1) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

Contact address

18.—(1) In relation to a review to which these Regulations apply, the “contact address” is the address (including any address for the purposes of electronic communication within the meaning of regulation 17) to which the applicant making the application for review wishes any document relating to the review to be sent.

(2) The contact address is as stated in the application for review unless the applicant has subsequently informed the relevant authority of a change to the contact address, in which case the contact address is the address most recently provided to the relevant authority by the applicant as the contact address

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers