

POLICY NOTE

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

SSI 2020/XXX

The above instrument is made in exercise of the powers conferred by sections 9(1) and 30(1) of the Islands (Scotland) Act 2018. The instrument is subject to the affirmative procedure.

These regulations make provision under section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) about reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. They also introduce a requirement for publication of island communities impact assessments by relevant authorities under section 30(1) of the Act which gives Scottish Ministers power by regulations to make supplementary provisions they consider appropriate for the purpose of giving full effect to the Act.

Policy Objectives

Section 9(1) of the Islands (Scotland) Act 2018 (“the Act”) requires that the Scottish Ministers establish by regulations, provision for reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1) of the Act. The regulations are subject to affirmative procedure in accordance with section 29(2)(b) of the Act.

Section 30(1) of the Act which gives Scottish Ministers power by regulations to make supplementary provisions they consider appropriate for the purpose of giving full effect to the Act are subject to negative procedure in accordance with section 30(3)(b) of the Act. Through the application of section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 (combining of certain powers), the exercise of powers are being combined in one instrument.

Section 9(2) of the Act sets out the specific features that may be included in the review provisions.

These Regulations create provision for reviews that satisfies the requirements of section 9 of the Act.

Under the provisions, an applicant can request that a relevant authority, listed in the schedule to the Act, carry out a review of a decision relating to an island communities impact decision.

The key features of the provisions are as follows:

- An island communities impact assessment prepared by a relevant authority is to be published on a website. Previously, in terms of the Act, a relevant authority was only obliged to publish its reasons for not carrying out an island communities impact assessment. Now, all island community impact assessments are to be published in the interests of transparency. This provision is introduced as a supplementary provision considered appropriate for the purpose of giving full effect to the Act.

What can be reviewed and who can apply:

- A review can be requested in respect of decisions relating to both existing and future policies, strategies or services. The review process also applies to policies, strategies and services of the Scottish Ministers to be implemented by legislation.
- A review of a decision can be requested by an individual who is a resident of an island community at the time of the decision, or a community controlled body, or a relevant local authority listed in the Act.
- An applicant can request a review where the applicant can demonstrate having been or likely to be directly affected by the policy, strategy or service which is the subject matter of that decision.

Grounds for review:

- The grounds for requesting a review are that :
 - (i) the applicant disagrees with the published explanation of the relevant authority for not preparing an island communities impact assessment,
 - (ii) the applicant considers that the relevant authority, in making its decision, has failed to properly describe the likely significant different effect of the policy, strategy or service,
 - (iii) the applicant considers that the relevant authority, in making its decision, has failed to properly assess the extent to which the relevant authority considers that the policy, strategy or service can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it,
 - (iv) the relevant authority has reviewed a policy, strategy or service and has decided not to prepare an island communities impact assessment and has not published an explanation for not preparing an island communities impact assessment and the applicant considers that the 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.
- The application must be made using an application form which forms part of the Regulations and must be accompanied by all supporting documentation.

Application Process:

- An application for review under grounds (i), (ii) or (iii) must be made to the relevant authority within 3 months of the publication date of the decision. Where the relevant

authority has decided not to prepare an island communities impact assessment and has not published an explanation (ground (iv)), then an application can be made at any time after the decision. In the latter case, there is no time limit so as not to prejudice an applicant where there is no published decision.

- An application for review is validated if all relevant information is received by the relevant authority. Where an application is incomplete, the relevant authority must afford the applicant one further opportunity to supply the required information by giving notice to the applicant. If the application is validated, the relevant authority notifies the applicant. The validation date is the date of the written notice.
- A relevant authority can decline to consider an application on two grounds: if it pertains to a decision for which an application has already been received and validated; and where an applicant has received a notice from the relevant authority to supply outstanding information and the applicant has failed to submit this. The first ground was considered essential to avoid unnecessary duplication of applications. A relevant authority must publish a notice with details of the review on its website.
- Written representations may be made by any person to the relevant authority. A copy of the written representations will be sent to the applicant for comment.
- The process allows the relevant authority to determine the review without further procedure. Alternatively, it can decide that further representations or information is required by way of written representations.
- The relevant authority may request such further representations or information by giving written notice to the applicant, and any other person from whom the relevant authority wishes to receive further representations or information. Copies of further representations or information will be sent to the applicant and other parties on whom notice was given and they will have the opportunity to make comments. The relevant authority must make copies of any representations or comments received by them available for inspection on a website. Where any new evidence has arisen as a result of further procedure, the relevant authority, if it wishes to consider this, must afford the applicant and any other relevant party an opportunity to make representations.

Decision Process:

- The relevant authority has 6 months from the validation date to issue a decision notice. The decision notice, amongst other things, must state what further action that the relevant authority will take and the timeframe within which it will be taken. Alternatively, the decision notice can state that no further action will be taken.
- The further actions that can be taken by a relevant authority are: that an island community impact assessment will be carried out where one has not previously been prepared; that variations are made to part (or parts) of an island community impact assessment; or that a new island community impact assessment will be carried out where one has previously been prepared.
- There is no ability to appeal the decision as the Act does not give any scope for an appeal process.

Consultation

The Scottish Ministers have consulted with the relevant authorities listed in the schedule of the Act. A policy proposals paper was circulated to relevant authorities. An analysis of responses was completed. As a result of the consultation, the policy proposals were adjusted to reflect stakeholder comments and concerns. In particular, the feedback from the consultation helped shape consideration of who can make an application for review, the grounds for review of a relevant authority's decision; the time for a relevant authority to make a decision from the date of validation of the application; and the timeframe for making an application, particularly where there is no published decision of an ICIA.

Impact Assessments

These Regulations create a scheme for the review of decisions taken by relevant authorities in respect of island communities impact assessments.

Screening under the Child Rights and Wellbeing Impact Assessment (CRWIA), and Strategic Environment Assessment (SEA) concluded that no impact assessments are required, as these Regulations have no effect on children's rights and welfare, or the environment.

The Scottish Government considers that the Regulations and the scheme they establish do not give rise to any human rights concerns and comply with the European Convention on Human Rights (ECHR). It is anticipated that any improvements to outcomes for island communities as a result will be positive with respect to human rights.

An Equality Impact Assessment (EQIA) was carried out. There is very little data about protected characteristics at an islands level. Notwithstanding this, the evidence gathered was sufficient to conclude that the review mechanism will only have a positive impact in addressing inequality in island communities.

In consideration of the Fairer Scotland Duty (FSD), it is anticipated that the implications of the review of a decision by a relevant local authority will have a positive effect, including on outcomes in island communities. The scheme created by these Regulations does not affect socioeconomic outcomes.

While there is no formal Digital Impact Assessment, it is appropriate to consider how the Regulations can be future-proofed in light of upcoming changes to technology. Where the Regulations require publication of notices or documents, this is in the form of publishing a notice on a website or by other electronic means. Part 4 of the Regulations concerns electronic communication.

A Data Protection Impact Assessment (DPIA) was carried out. An Article 36(4) Enquiry Form was completed for the purpose of consulting with the Information Commissioner's Office in respect of the General Data Protection Regulation (GDPR). The ICO confirmed they did not wish to provide any further input following the review of the Data Protection Officer. The Data Protection Officer's review of the DPIA did not reveal any impact on personal data and privacy provided safeguards were put in place.

Accordingly, Regulation 9(2) which refers to the publication of representations and comments, provides safeguards in respect of anonymising private data. The application form in the Schedule to these Regulations also refers to a Scottish Government Privacy Notice which notifies applicants and those making written representations how their data will be dealt with.

An Island Communities Impact Assessment (ICIA) was carried out. The assessment did not identify any potential barriers or wider impacts to island communities. The Regulations will have a positive impact on inequalities of outcome experienced by island communities.

It is considered that the Regulations are not likely to have an effect on an island community which is significantly different from their effect on other communities (including other island communities). The Regulations will be monitored and consideration will be given to guidance with the aim of giving clarity to stakeholders where required.

Financial Effects

A Business and Regulatory Impact Assessment was carried out and concluded that the Regulations will have no impact on businesses across Scotland. A copy is attached to this note.

The Minister for Energy, Connectivity and the Islands has confirmed that he is satisfied with the BRIA carried out.

Scottish Government

Directorate for Agriculture and Rural Economy (**D:ARE**) | Rural Economy and Communities Division.

October 2020