

2020 No. 465

LOCAL GOVERNMENT

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

Made - - - - - *22nd December 2020*

Coming into force - - - - - *23rd December 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 9(1) and 30(1) of the Islands (Scotland) Act 2018^(a) and all other powers enabling them to do so.

In accordance with section 29(2)(b) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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(a),

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

“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.

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
22nd December 2020

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 5

APPLICATION FOR REVIEW OF DECISION RELATING TO ISLAND COMMUNITY IMPACT ASSESSMENT

REGULATION 5 OF THE ISLAND COMMUNITIES IMPACT ASSESSMENTS
(PUBLICATION AND REVIEW OF DECISIONS) (SCOTLAND) REGULATIONS 2020

Notes:

1. This form is to be used by an applicant applying for a review of a decision relating to an island community impact assessment (“ICIA”) under regulation 5 of the Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020.
2. You may download this form and complete it manually or electronically.
3. If you complete the form manually, please do so using black or blue ink and capital letters.
4. Whether you complete the form manually or electronically, you may continue any answer on a separate sheet of paper. If you do this, please—
 - indicate on the form where any answer is given or continued on a separate sheet,
 - indicate on each separate sheet the question number(s) to which it relates.
5. This form must be submitted directly to the relevant authority identified in Section 3. For details of where to send this form and attached documents, please visit www.gov.scot and search for “empowering our island communities”.
6. Failure to supply all relevant information could invalidate your application.

SECTION 1 - WHO IS APPLYING

1.1 Please put an “X” in the relevant box:—

Applicant is an individual

Applicant is a community controlled body

Applicant is a relevant local authority

1.2 Please state who is applying for the review:

SECTION 2 – DETAILS OF WHO IS APPLYING

2.1 Please supply the contact details of the applicant:

Postal Address:

Postcode:

E-mail:

2.2 Please confirm if you agree to all correspondence regarding your application being sent by e-mail (put an X in the box)? Yes No

SECTION 3 – DETAILS OF RELEVANT AUTHORITY

3.1 Please provide the name of the relevant authority who made the decision which you are applying to have reviewed:

SECTION 4 – GROUNDS FOR REVIEW

4.1 Please mark an “X” in the relevant box to confirm which ground applies to this application (tick one box only, unless both grounds (ii) and (iii) apply):

- (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 describe the likely significantly different effect of the policy, strategy or service (as the case may be),
- (iii) the applicant considers that the relevant authority, in making its decision, has failed 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
- (iv) the relevant authority has reviewed a policy, strategy or service 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.

SECTION 5 – DETAILS OF DECISION TO WHICH THE APPLICATION RELATES

5.1 Please supply the following details about the decision:

Has an ICIA been prepared? (put an X in the box)? Yes No

If Yes, date of publication of ICIA:

If No, has the relevant authority published reasons for not preparing an ICIA? (put an X in the box) Yes No

If Yes, date of publication of reasons:

If No, please provide details of the policy, strategy or service to which this application relates:

SECTION 6 - STATEMENT OF REASONS

6.1 You MUST state, in full, why you are applying for a review of the relevant authority’s decision. Your statement must set out all matters you consider require to be taken into account in determining the review.

Note: you might not have a further opportunity to add to your statement of reasons at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account. You will though be entitled to comment on (i) any additional matter which may be raised by the relevant authority in its response to your application, or (ii) any representations the relevant authority might receive from any other person or body.

State the reasons for your application and all matters you wish to raise here. (If necessary, this can be continued or provided in full on a separate document.)

SECTION 7 - STATEMENT DEMONSTRATING DIRECT EFFECT

7.1 You **MUST** state, in full, how you have been, or are likely to be, directly affected by the policy, strategy or service to which the decision relates.

SECTION 8 - LIST OF DOCUMENTS / EVIDENCE

8.1 Please provide a list of all documents, materials and evidence which you have provided with your application and intend to rely on in support of your application and ensure that the documents are clearly numbered (if necessary, this can be continued or provided in full on a separate document).

The relevant authority will publish all documents relating to the review on its website.

If you take part in the review process or use the website of the relevant authority, the relevant authority may collect certain information about you. If the relevant authority is the Scottish Ministers, to find out more about what information is collected and how the information is used and managed, please read the Scottish Government island community impact assessments review of decisions procedure privacy notice on the Scottish Government Website www.gov.scot. For any other relevant authority, please see the website of that relevant authority for details of their privacy notice.

DECLARATION

I apply to the Relevant Authority as set out on this form and supporting documents.

Signed

Date

This form and all supporting documents should be sent to the relevant authority identified in Section 3. Details of the contact addresses for each relevant authority can be found on the Scottish Government Website www.gov.scot.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under sections 9(1) and 30(1) of the Islands Scotland Act 2018 (“the Act”) about reviews of decisions of relevant authorities relating to island community impact assessments under section 8(1) of the Act. They also introduce a requirement for publication of island communities impact assessments by relevant authorities.

Part 1 of the Regulations sets out how the Regulations apply and are to be interpreted.

Part 2 of the Regulations sets out the requirement for relevant authorities to publish island communities impact assessments.

Part 3 of the Regulations sets out the procedure for the review process.

Regulation 4 sets out the grounds on which an applicant can request a review of a decision relating to an islands community impact assessment.

Regulation 5 sets out the time period within which an application for review may be made and that the application should be made using the form set out in the schedule.

Regulation 6 sets out how a relevant authority is to acknowledge an application, the time period within which an applicant must provide any missing information following a notification from the relevant authority, how an application is validated and the circumstances in which a relevant authority can decline to consider an application.

Regulation 7 requires a relevant authority to publish a notice with details about the review once an application has been validated. It sets out the information that must be included in the notice. The notice must contain details about how any representations in respect of the review can be made.

Regulation 8 requires that the relevant authority must send a copy of any representations received to the applicant and inform them how and when they can comment on representations.

Regulation 9 requires that the relevant authority makes copies of representations and comments received under regulations 7, 8 or 12 available for inspection on a website and sets out what information should or can be removed prior to publication.

Regulations 10 and 11 make provision for the procedure, if any is considered to be required, to be followed by the relevant authority when determining the review.

Regulation 12 sets out the procedure for how written submissions are to be sought, to whom these must be sent and how comments can be made on any additional material.

Regulation 13 sets out the procedure to be followed by the relevant authority if new evidence is to be taken into account following the conclusion of any procedure under regulation 11.

Regulation 14 sets out the time period in which the relevant authority must issue their decision notice, who is to be issued with a copy of the notice and that the notice must be made available for inspection.

Regulation 15 sets out the information that must be included in the decision notice. The notice must state the relevant authority’s determination of the review and the reasons for that determination. The notice must state whether or not further action will be taken by the relevant authority.

Regulation 16 sets out what further actions may be taken by a relevant authority following a review.

Part 4 of the Regulations makes general provision in relation to the use of electronic communications (regulation 17) and about the definition of ‘contact address’ (regulation 18).

A Business and Regulatory Impact Assessment (“BRIA”), Equality Impact Assessment (“EIA”), Fairer Scotland Duty Impact Assessment (“FSDIA”), Data Protection Impact Assessment

(“DPIA”) and Island Communities Impact Assessment (“ICIA”) have been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. Copies of the BRIA, EIA, FSDIA, DPIA and ICIA are available from Scottish Government, Victoria Quay, Leith, Edinburgh EH6 6QQ and online at www.legislation.gov.uk

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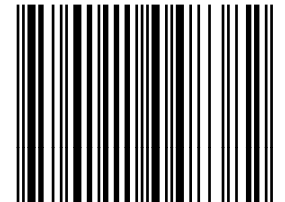
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