

Business and Regulatory Impact Assessment

Title of Proposal

Review of Island Communities Impact Assessments Decisions (Scotland) Regulations under Section 9 of the Islands (Scotland) Act 2018

Purpose and intended effect

Background

Island Communities Impact Assessment under the Islands (Scotland) Act 2018 will ensure that optimal solutions to islands areas are applied at **all** stages of policy development, taking account of equity and equality issues. This is not the case at present. The review scheme under section 9 of the Act will allow island communities to seek a review of decisions relating to island communities impact assessments.

In this Business and Regulatory Impact Assessment, 'the Regulations' refers to the Review of Island Communities Impact Assessments Decisions (Scotland) Regulations, and 'the 2018 Act' refers to the Islands (Scotland) Act 2018.

Objective

The Regulations aim to put in place a fair, transparent and proportionate review scheme for the review of decisions by relevant authorities related to island communities impact assessments.

The policy objective is the empowerment of island communities.

Rationale for Government intervention

The Scottish government is obliged under section 9 of the 2018 Act to make provision for review of decisions relating to island communities impact assessments.

The Regulations put in place a process to allow applicants to seek a review of a decision by a relevant authority relating to island communities impact assessments.

The National Outcomes that the proposal contributes to are:

Communities: We live in communities that are inclusive, empowered, resilient and safe; and

Human Rights: We respect, protect and fulfil human rights and live free from discrimination.

Consultation

Within Government

The Regulations have been developed in collaboration with policy leads throughout Scottish government.

Public Consultation

In developing these Regulations, the Scottish Government have worked closely with island stakeholders and individual organisations with an interest in island communities impact assessments.

Extensive consultation started on 6 April 2019 on the National Islands Plan which included island communities impact assessments.

The Consultation process was twofold. On the one hand, there was a more traditional on-line consultation that respondents could access using the Scottish Government's consultation hub, Citizen Space. On the other hand, a less traditional approach was developed when it came to the face-to-face events. A total of 61 consultation events were arranged on 40 islands.

Respondents believed that the main objectives of an island communities impact assessment should be to consider the uniqueness of each island, ensure benefit of policies for island communities, and take a transparent approach that improves accountability. Respondents felt that it was crucial that islands are given a voice, allowing for community feedback and involvement.

Key questions raised by respondents in relation to the process were:

- What is the trigger for a review?
- Who is responsible for a reviewing plan?
- Will it be possible to communicate with the team conducting the review, to ask questions and seek clarifications?
- What is the process for the review? Will it include community consultation?
- What are the timelines for the review?
- Where will the information relating to the review be available?

The Scottish Government also issued a proposal paper on 26 June 2020 seeking views on an overview of the review scheme under Section 9 of the 2018 Act to allow consultation with relevant authorities listed in the 2018 Act. The consultation ran for three weeks, and engagement with stakeholders continued throughout that period. We received responses from 19 relevant authorities in total.

The paper comprised of 4 specific questions, and concluded by asking for any other additional comments.

A summary of the questions and the provided responses follows:

1. The definition in the Act of island communities refers to individuals (bodies are not included). How wide should the review process be and, in particular, who should be entitled to call for a review?

- 7 respondents considered that individuals should be allowed to apply for a review. 5 respondents indicated that community bodies, and, specifically, local authorities should be entitled to call for a review. 2 respondents considered that both individuals and community bodies should be allowed to apply for a review.

2. Are the grounds for review of a relevant authority's decision sufficient?

- The overwhelming response was that the grounds for review are sufficient.

3. Is 6 months sufficient time for a relevant authority to make a decision from the date of validation of the application?

- Of the 18 respondents who expressed a clear preference, 15 considered 6 months was a sufficient time for a relevant authority to make a decision from the date of validation of the decision.

4. What would be a suitable timeframe for making an application, particularly where there is no published decision of an ICIA?

- There was no settled view to this question with respondents suggesting a broad range of timeframes.
- The range of timeframes suggested to make a decision were:
 - a) where there was a published decision, from 20 days to 12 months; and
 - b) where there was no published decision, from 3 months to 2 years.

2 respondents commented on issues relating to the BRIA. In general, these comments considered that processes should be proportionate and add clear value, particularly at a time when Local Authority budgets are being cut and staff time is being increasingly focused on delivering critical services. It was also considered that it was important to take into account the diverse range of relevant authorities listed under the Act and the varying nature of their services and policies. The process should also be proportionate to relevant authorities' capacity and resources, particularly around review publication and the associated costs.

Business

The Scottish Government received **414 responses** to the online consultation on the National Islands Plan and Island Communities Impact Assessments.

394 responses were submitted through the online consultation portal. A further **20 organisation responses** were submitted on an *ad hoc* basis or as policy briefs. Out of all participants, **356 participants (14%)** responded on behalf of an organisation.

The engagement activities included a mixture of face-to face meetings and telephone conversations.

It was clear from this engagement that there would be no impact on business outwith relevant authorities listed in the 2018 Act. Only relevant authorities are required to carry out reviews of island communities impact assessments.

The review of decisions consultation was focussed on the 71 relevant authorities listed in the 2018 Act. Responses received included those from Fire Scotland, Highlands and Islands Enterprise, NHS Greater Glasgow and Clyde, Scottish Courts and Tribunals Service, Skills Development Scotland, Sport Scotland and the University of the Highlands and Islands. Follow-up engagement has been through telephone calls.

Options

Option 1 – Do nothing

An assessment like this usually requires consideration of a 'do nothing' option.

This would mean putting no detail into Regulations, and operating solely on the basis of what is in the primary legislation, the 2018 Act. However, section 9 of the 2018 Act states that The Scottish Ministers must by regulations make provision about reviews of decisions of relevant authorities relating to island communities impact assessments.

This was not considered a satisfactory option for the processes associated with review of decisions.

Option 2 – The Regulations

The Regulations are based on section 9(2) of the 2018 Act which specifies criteria for consideration:

- (a) the procedure to be followed in connection with reviews,
- (b) the manner in which reviews are to be conducted,
- (c) the time limits within which applications for reviews are to be made,

- (d)the circumstances under which applications for reviews may or may not be made,
- (e)the persons to whom applications for reviews may be made, and
- (f)the steps that may be taken by a relevant authority following a review.

During the development of these Regulations alternative approaches to a review mechanism were explored in conjunction with Scottish Government Legal Directorate . In particular, the review mechanisms in The Additional Powers Request (Scotland) Regulations 2019. These regulations are islands specific and emanate from the Islands (Scotland) Act 2018. The Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 were also considered in the approach taken.

Sectors and groups affected

As indicated, the main group that will be affected by these Regulations are the relevant authorities listed in the 2018 Act. These are the bodies who will require to carry out a review.

Applicants who may request a review are: 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.

Benefits

It is hard to see what the benefits of having no regulations in place (Option 1) could be.

The Regulations (Option 2) should

- Provide a simple review process and
- Empower island communities by giving them the opportunity to challenge island communities impact assessments.

Costs

Option 1 – Do Nothing

- Having no detail of processes in place in secondary legislation has a less clear resource burden attached to it.

Option 2 – The Regulations

No businesses (outwith relevant authorities listed in the 2018 Act) identified areas where there is the potential for an increase in costs. Relevant authorities listed in the 2018 Act provided the following feedback without providing any quantification of costs:

- It was suggested that it should not be mandatory for small organisations to do national publication as this could be expensive and

disproportionate. The proposal was revised so that there was no national newspaper publication requirement, but rather that an application for review can be published on a relevant authority's website.

- As indicated, it was generally considered that the process should be proportionate to relevant authorities' capacity and resources, particularly around review publication and the associated costs.

Scottish Firms Impact Test

Views were sought from relevant authorities on the impact of the consultation proposals. Most comments were focused on the importance of ensuring that the process should be proportionate to relevant authorities' capacity and resources.

As indicated, 19 relevant authorities responded to the consultation.

Feedback indicated that the proposals are not likely to have a negative effect on Scottish businesses, as the proposals largely reflect a review process which doesn't affect businesses.

Competition Assessment

There has been no indication from any organisations contacted that there will be an impact on the competitiveness of firms in Scotland.

Consumer Assessment

There has been no indication from any organisations contacted that there will be an impact on the quality, availability or prices of goods or services as the proposals largely reflected what is currently in place.

Test run of business forms

There are no new business forms contained within the Regulations.

Digital Impact Test

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.

Legal Aid Impact Test

These Regulations do not have any impacts on rights to access justice for individuals, through availability of legal aid or possible expenditure from the legal aid fund.

Monitoring

The Regulations will be subject to regular scrutiny from the islands authorities through the Partnership Working Group and the Islands Strategic Group. Feedback on the review process will also be obtained from Convention of the Highlands and Islands and COSLA.

Implementation and delivery plan

It is intended that the Regulations will come into force on 23 December 2020. It is also intended that Guidance for the preparation of assessments under sections 7 and 8 of the 2018 Act will also come into force on the same day.

Post-implementation review

Section 5 of the Islands (Scotland) Act 2018 requires The Scottish Ministers to prepare a report about the steps which the Scottish Ministers have taken to comply with the duties in relation to island communities imposed by section 7 (including any island communities impact assessment prepared under section 8), and section 13. It is considered that reviews of decisions would be reported on at the same time.

Summary and recommendation

The introduction of the Regulations will allow island communities to apply for a review of an island communities impact assessment carried out by a relevant authority.

Through the consultation responses and meetings with stakeholders, we have devised a scheme for the review of decisions which is proportionate and robust and which will empower island communities.

There are some concerns from relevant authorities relating to the practical implementation and delivery of the Regulations. This will be monitored and consideration will be given to guidance which will provide greater detail on processes with the aim of giving clarity to stakeholders where required.

The Business and Regulatory Impact Assessment concludes that the Regulations will have no impact on businesses across Scotland.

This assessment is recommended for Ministerial clearance and submission in support of the Regulations.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Paul Wheelhouse

Paul Wheelhouse
Minister for Energy Connectivity and the Islands

Dated: 28 October 2020

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