

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

Purpose and intended effect

Background

Island Communities Impact Assessments (ICIAs) 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. The review scheme under the Regulations will allow island communities to seek a review of decisions by relevant authorities relating to Island Communities Impact Assessments.

In this Assessment, ‘the Regulations’ refers to The Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 and ‘the 2018 Act’ refers to the Islands (Scotland) Act 2018.

Objective

The main outcome of the Regulations will be a fair, transparent and proportionate review mechanism for island communities to challenge ICIAs, ensuring that they consider the uniqueness of each island, ensure benefits for island communities, and improve accountability.

The overall policy objective is to ensure 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 island residents and communities 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.

Gathering Data and Identifying Stakeholders

Since the review process for ICIA's, like the introduction of ICIA's themselves, is new, there was limited data with no mitigations in place.

That being said, an extensive consultation exercise was undertaken beginning on 6 April 2019 in relation to the National Islands Plan which included feedback on ICIA's.

The consultation process was two-fold. 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, face-to-face consultation events were carried out across our islands with over 60 events arranged on 41 islands.

Respondents to the consultation believed that the main objectives of an ICIA 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 included:

- 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?

Consultation

Within Government

The Regulations have been developed in collaboration with policy leads throughout Scottish government. A seminar was also held on 23 July with policy leads. 17 policy leads attended ranging from forestry to crofting.

Public Consultation

In developing these Regulations, the Scottish Government have worked closely with island stakeholders and individual organisations with an interest in ICIA's. The key questions raised by respondents in the National Islands Plan Consultation have shaped the process and, in particular, the next round of consultation which took a more focussed approach with relevant authorities listed in the 2018 Act.

The Scottish Government undertook a consultation in relation to the review scheme under Section 9 of the 2018 Act on 26 June 2020. The consultation ran for three

weeks, and engagement with stakeholders continued throughout that period. We received responses from 19 relevant authorities.

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

A summary of the questions and the 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.

An analysis of responses to the consultation will be published.

In general, these comments highlighted 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.

ASSESSMENT

The relevant authorities listed in the 2018 Act will be directly affected by these Regulations as they are the bodies who will be required to carry out a review.

Applicants who may request a review are individuals who are residents of an island community at the time of the decision, or a community controlled body, or a relevant local authority. It is considered that within this group of applicants, there is a wide scope for island communities to seek a review and challenge an ICIA, or the lack of one.

Specific provisions which have been incorporated to empower island communities include:

- An ICIA 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 ICIA. Now, all ICIA's are to be published in the interests of transparency. This will allow island communities greater access to decision making.
- A review of a decision can be requested in respect of a policy, strategy or service where that decision was made prior to the regulations coming into force. This was considered a key element following the consultation on the National Islands Plan and Island Communities Impact Assessments.
- An application for review 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 ICIA and has not published an explanation, 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.

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

This assessment did not identify any negative impacts to island communities. The Regulations will have a positive impact on outcomes experienced by island communities.

There were 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 with the aim of giving clarity to stakeholders where required.

In conclusion, 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).

Monitoring

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

Implementation

It is intended that the regulations will come into force on 23rd December 2020. It is also intended that the guidance for preparation of assessments under sections 7 and 8 of the 2018 Act will come into effect 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.

Publishing

This assessment will be published on the Scottish government website.

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