

2019 Reviews of Electoral Arrangements Islands Community Impact Assessment

For decision

1. At its 14 April 2021 meeting, the Commission considered Paper 2558 and asked the Secretariat to take advice from solicitors on some issues, including the question of the need for an Islands Communities Impact Assessment.

Background

2. The Islands (Scotland) Act 2018 applies two main duties to relevant authorities including the Commission:

Section 7 states that a Relevant Authority must have regard to island communities in carrying out its functions. Section 10 sets out how a Relevant Authority demonstrates compliance with the duty imposed by section 7:

(a) by making such arrangements as it considers appropriate to review any policy, strategy or service (as the case may be) which it develops or delivers in carrying out its functions, and

(b) either;

(i) in the case where the authority must prepare an island communities impact assessment under section 8(1), by preparing that assessment, or

(ii) in any other case, by making such an assessment or taking such other steps as the authority considers appropriate.

Under section 10 of the Act, part of how a Relevant Authority demonstrates compliance with the Section 7 duty is by making arrangements it considers appropriate to review any policy, strategy or service. This will mean that existing policies, strategies and services will require to be reviewed by a Relevant Authority going forward, regardless of whether there is any formal application for review.

Section 8 states that a Relevant Authority must prepare an ICIA in relation to a policy, strategy, or service, which, in the authority's opinion, is likely to have 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 authority exercises its functions.

3. The key questions appear to be:
 - Is a review of electoral arrangements a policy, strategy or service?
 - If so, do any or all of the reviews of electoral arrangements in the 6 islands councils have a **significantly different** effect on any island community compared to other communities, including other island communities?
4. In considering these questions advice has been taken from Harper Macleod and Scottish Government officials. Their responses are set out in Appendices B and C respectively. Taken together it would seem that the Commission should consider a review of electoral arrangements as a policy, strategy or service and consider the need for an ICIA accordingly.
5. The Secretariat has prepared a first draft of an assessment template at Appendix D. This takes the position that a full ICIA is not required on the basis that there is not a

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significantly different impact and what difference there is arises principally because of the legislative framework. It also limits its focus to the current islands reviews. It notes as a suggestion that the Commission might consider a post-review consultation with islands communities in order to assess how the flexibility offered by the islands legislation was used, including the very limited proposed use of single member wards in the final proposals.

6. If agreed, the Secretariat suggests the wording of the assessment is considered by solicitors prior to publication.
7. The Scottish Government's toolkit provides full information on conducting an ICIA: [Island Communities Impact Assessments: guidance and toolkit - gov.scot \(www.gov.scot\)](http://www.gov.scot/Information/IslandCommunities/IslandCommunitiesImpactAssessments/guidanceandtoolkit)

Conclusion

8. The Commission is invited to consider its approach to the section 7 duty to have regard to islands communities as well as to agree if it thinks an ICIA is required and if so when it should be completed. If an ICIA is not completed, then draft text is attached which, once finalised, would be published on the website and demonstrate compliance with the s7 duty.

Secretariat
May 2021

Extract from the Islands (Scotland) Act 2018

PART 3

DUTIES IN RELATION TO ISLAND COMMUNITIES

Duties of certain authorities in respect of policies, strategies and services

7 Duty to have regard to island communities

(1) A relevant authority must have regard to island communities in carrying out its functions.

(2) In this Part, a “relevant authority” means a body, office-holder or other person listed in the schedule.

(3) The Scottish Ministers may by regulations amend the schedule by—

- (a) adding an entry for any person, body or office-holder,
- (b) varying the description of an entry, or
- (c) removing an entry.

8 Island communities impact assessment

(1) A relevant authority must prepare an island communities impact assessment in relation to a—

- (a) policy,
- (b) strategy, or
- (c) service,

which, in the authority’s opinion, is likely to have 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 authority exercises its functions.

(2) Subsection (1) applies to the development, delivery and redevelopment of the policy, strategy or service (as the case may be).

(3) An island communities impact assessment prepared under subsection (1) must—

- (a) describe the likely significantly different effect of the policy, strategy or service (as the case may be), and
- (b) assess the extent to which the 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.

(4) If a relevant authority does not prepare an island communities impact assessment in relation to a—

- (a) policy,
- (b) strategy, or
- (c) service,

which has an effect on an island community, it must publish, as soon as reasonably practicable afterwards and in such manner as it considers appropriate, an explanation of its reasons for not doing so.

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9 Reviews of decisions relating to island communities impact assessments

(1) The Scottish Ministers must by regulations make provision about reviews of decisions of relevant authorities relating to island communities impact assessments under section 8(1).

(2) Regulations under subsection (1) may, in particular, make provision about—

- (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.

10 Compliance with section 7 duty

A relevant authority demonstrates compliance with the duty imposed by section 7—

(a) by making such arrangements as it considers appropriate to review any policy, strategy or service (as the case may be) which it develops or delivers in carrying out its functions, and

(b) either—

- (i) in the case where the authority must prepare an island communities impact assessment under section 8(1), by preparing that assessment, or
- (ii) in any other case, by making such an assessment or taking such other steps as the authority considers appropriate.

Guidance and reporting

11 Guidance about section 7 duty

(1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the duty imposed by section 7.

(2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

- (a) each local authority listed in the schedule,
- (b) such other persons as they consider represent the interests of island communities, and
- (c) such persons as they consider likely to be affected by the guidance.

12 Reporting regarding section 7 duty

(1) A relevant authority to which the duty imposed by section 7 applies in a reporting period must publish information about the steps which the authority has taken to comply with that duty during that reporting period.

(2) A “reporting period” is any period determined by the authority of up to a maximum of one year.

(3) The relevant authority may publish the information in such manner as the authority considers appropriate (for example in an annual or other report prepared by the authority).

(4) Subsection (1) does not apply to the Scottish Ministers (see section 5).