

ISLANDS (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 3 – DUTIES IN RELATION TO ISLAND COMMUNITIES

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

Section 7 – Duty to have regard to island communities

16. This section places a duty on the Scottish Ministers and other public authorities, listed in the schedule and referred to as “relevant authorities” in the Act, to have regard to island communities in carrying out their functions. See section 10 on compliance with this duty.
17. Subsection (3) provides a power for the Scottish Ministers to amend the list of relevant authorities in the schedule by regulations. Such regulations are subject to the affirmative parliamentary procedure (see section 29(2) of the Act).

Section 8 – Island communities impact assessment

18. This section places a duty on relevant authorities to undertake an impact assessment when developing, redeveloping and delivering a policy, a strategy or a service, if it is anticipated to have a significantly different effect on an island community compared with other communities in Scotland (including other island communities as well as non-island communities).
19. The question of which other communities differential impact is measured against will depend on whether the authority operates locally or nationally. Where the relevant authority’s scope is limited geographically (for example a Health Board) then the assessment of differential impact would only include other communities in the same geographical area; whereas national bodies must consider the impact on communities across the whole of Scotland.
20. Subsection (3) sets out the information that an island communities impact assessment must contain: a description of the differential effect which is anticipated; and the authority’s assessment of the extent to which development or delivery can be carried out in such a way as to improve or (in the case of potentially adverse effect) mitigate the outcomes for island communities resulting from the policy, strategy or service in question.
21. The intention is that island communities impact assessments will become a normal procedural step in public authorities’ decision-making processes, in the manner of the equality impact assessment, used in relation to the duties contained in the Equality Act 2010.
22. Subsection (4) provides that if a relevant authority does not prepare an islands communities impact assessment under this section then it must publish an explanation of its reasons for not doing so.

Section 9 – Reviews of decisions relating to island communities impact assessments

23. This section provides a regulation-making power which the Scottish Ministers must use to make provision about reviews of decisions of relevant authorities relating to island communities impact assessments under section 8. Subsection (2) sets out the items which the review mechanism set up by regulations may contain, such as procedure, time limits and steps to be taken following the review. Under section 29(2) the regulations are subject to the affirmative procedure.

Section 10 – Compliance with section 7 duty

24. This section sets out how a relevant authority fulfils the duty to have regard to island communities imposed by section 7. Under paragraph (a) there is a general duty for a flexible and proportionate review process by requiring the authority to make such arrangements as it considers appropriate to review any of its policies, strategies or services to ensure that it complies with the section 7 duty.
25. Paragraph (b) applies in relation to individual policies, strategies or services. Under that, where the mandatory criteria under section 8(1) apply, triggering the requirement to prepare an island communities impact assessment, compliance will be demonstrated by preparing that assessment. But where those criteria do not apply, relevant authorities are left with a residual discretion on what action to take: other ways of demonstrating compliance might be, for example, through notification of the intended redevelopment of an authority's policy to potentially affected persons in the islands; or through consultation with groups representing island communities during the delivery of a particular service.