

ISLANDS (SCOTLAND) ACT 2018

EXPLANATORY NOTES

OVERVIEW OF THE ACT

PART 3 – DUTIES IN RELATION TO ISLAND COMMUNITIES

Duty of the Scottish Ministers in respect of legislation

Section 13 – Preparation of island communities impact assessment by Ministers

31. This section places a particular duty on the Scottish Ministers to undertake an impact assessment in relation to proposed legislation – both primary and secondary – which it is anticipated will have a significantly different effect on an island community from its effect on other communities in Scotland.
32. Before the Bill for the Act was introduced, the Standing Orders of the Scottish Parliament already required that a Government Bill must be accompanied by a Policy Memorandum setting out, among other things, “an assessment of the effects, if any, of the Bill on island communities” (Rule 9.3 on accompanying documents for Public Bills). However that only covered proposed primary legislation, whereas subsection (2) of this section defines “legislation” as including subordinate legislation as well as any proposed Bill for an Act of the Scottish Parliament.
33. “Subordinate legislation” here takes the default meaning given by schedule 1 of the Interpretation and Legislative Reform Act 2010: that is “an instrument made or to be made by virtue of an Act of Parliament or an Act of the Scottish Parliament.” Therefore the duty imposed by this section covers subordinate legislation under both UK and Scottish statutes, so long as it is made by the Scottish Ministers, and so long as it is subject to negative or affirmative Scottish Parliamentary procedure. However Acts of Sederunt and other court rules, statutory codes of practice, directions and guidance are not included here.
34. Subsection (3) sets out the information that an island communities impact assessment must contain: a description of the differential effect which is anticipated; the Scottish Ministers’ assessment of the extent to which development 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 legislation in question; and set out the financial implications of steps taken to mitigate the outcomes resulting from the legislation for island communities. Subsection (4) makes clear that an assessment completed under this section is considered to be an island communities impact assessment under section 8 and therefore demonstrates compliance with the section 7 duty.

Section 14 – Duty of the Scottish ministers to have regard to request for retrospective island communities impact assessment

35. This section allows a local authority listed in the schedule of the Act to request the Scottish Ministers to prepare and publish a retrospective island communities impact assessment. The request may apply in relation to existing legislation (primary or secondary legislation made in the Scottish Parliament) or national strategies, where they

have a significantly different effect on island communities. Under section 14, Ministers have 3 months to approve the request or to give reasons for rejecting it and, if approved, another 6 months to prepare the assessment. Any assessment prepared must describe methods and steps to rectify, mitigate or improve the effect of the legislation or strategy.

Section 15 – Scheme for requests by local authorities for devolution of functions

36. This section provides a regulation-making power which the Scottish Ministers must use to create a scheme for requests for the devolution of functions from local authorities. The request would be for Ministers to promote legislation devolving a function to the authority. Subsection (2) sets out matters that the regulations must contain, such as provision about the form of the request, the information that must be provided, the process, the timescale for the decision and the possible actions following the decision. Subsection (3) lists further discretionary provisions which may be included around consultation and information to be provided in the request.