

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations create a scheme under sections 15 and 21 of the Islands (Scotland) Act 2018 (the “Act”) under which the local authorities listed in the schedule of the Act (“relevant local authorities”) may request additional functions, duties or responsibilities (“additional powers”) from the Scottish Ministers. They also set out the period within which the Scottish Ministers must give notice of their decision, provide for the information which the decision notice must contain and set out actions to be taken where the Scottish Ministers decide to give effect to an additional powers request. The Regulations also make provision for the relevant local authority that made the request (the “requesting local authority”) to seek a review of a decision to refuse an additional powers request.

Part 2 of the Regulations sets out the procedure for making an additional powers request. Regulation 3 provides that an additional powers request may be made by a relevant local authority to the Scottish Ministers. Regulation 4 provides that the requesting local authority must be satisfied that it can demonstrate reasonable cause for making an additional powers request prior to doing so. Regulation 5 sets out the consultation requirements to be met prior to an additional powers request being made. Regulation 6 provides that an additional powers request must be in writing and specifies information which must be included in or accompany a request. Regulations 7 to 11 specify the steps to be followed by the Scottish Ministers where an additional powers request has been made. Regulation 7 provides for the acknowledgement of additional powers requests by the Scottish Ministers and the information to be included in such acknowledgement. Regulation 8 provides how the date on which the additional powers request is to be taken to have been made is established. Regulation 9 requires the Scottish Ministers to publish the additional powers request and accompanying documentation on a website or by other electronic means, together with a notice about the request, and sets out how this is to be done. The notice must contain details about how representations on the request may be made. In terms of regulation 10, the Scottish Ministers are to give the requesting local authority an opportunity to comment on any representations received in response to a notice published under regulation 9. Regulation 11 requires that the Scottish Ministers make copies of representations and comments received under regulations 9 and 10 available for inspection on a website or by other electronic means.

Part 3 of the Regulations sets out the procedure for making a decision in relation to an additional powers request. Regulation 12 provides that the Scottish Ministers must decide whether to give effect to or a refuse an additional powers request and sets out how this is to be done. Regulation 13 prescribes a period of 6 months after the date on which the additional powers request is treated as having been made under regulation 8 as the period within which the Scottish Ministers are to give notice of their decision unless a longer period is agreed with the requesting local authority. Regulation 14 specifies the information to be contained in the decision notice. Regulation 14 also requires the Scottish Ministers to publish the decision notice on a website or by other electronic means and to give notice to every person who made representations on the request of the decision.

Part 4 of the Regulations makes provision in relation to procedure for review where the Scottish Ministers refuse an additional powers request. Regulation 16 sets out the time period within which and how an application for review must be made. Regulation 17 provides for notification of the application for review to the requesting local authority. It also provides for notification to interested parties and gives such parties an opportunity to make representations and for the requesting local authority to comment on any such representations. In terms of regulation 18 the Scottish Ministers are to publish copies of documents relating to the review on a website or by other electronic means. Regulations 19 to 26 relate to the process of determination of an application for review. Regulation

19 requires the Scottish Ministers to appoint three persons to a review panel to consider, report and make recommendations on the additional powers request to the Scottish Ministers. Regulations 20 to 22 make provision for the procedure, if any is considered to be required, to be followed by the review panel when considering an application for review. Regulation 22 sets out procedures for how written submissions are to be sought and the Hearing Session Rules set out in the schedule contain rules as to how hearings are to be conducted. Regulation 23 relates to further procedure by the Scottish Ministers if they propose to consider new evidence after consideration of the review panel's report. Regulation 24 makes provision in relation to the provision of further copies of documents. Regulation 25 sets out the procedure to be followed by the Scottish Ministers when determining a review, by confirming or changing their decision, and the period within which the determination must be made. Regulation 26 requires the Scottish Ministers to publish a copy of the determination notice on a website or by other means and to notify the requesting local authority and interested parties of the determination.

Part 5 of the Regulations requires the Scottish Ministers to publish a statement of actions with timescales for carrying out those actions following a decision to give effect to an additional powers request.

Part 6 of the Regulations makes provision for the use of electronic communication.